

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
Index No. 07 CV 6268 (WP) (MDF)

- - - - - x

ROCKLAND VENDING CORP.,

Plaintiff,

- against -

ROXANNE CREEN, sued in her individual  
capacity; MARSHA F. RILEY, sued in her  
individual capacity; STEWART KIDDER,  
sued in his individual capacity,

Defendants.

- - - - - x

November 2, 2007

10:05 a.m.

DEPOSITION of MICHAEL FREED, taken by

Defendants, Pursuant to Federal Rule 30(b)(6),

held at 10 East Post Road, White Plains, New York,

10601, before Michael Catania, a Notary Public of

the State of New York.

## 1 APPEARANCES

2 SUSSMAN &amp; WATKINS

3 P.O. Box 1005

4 Goshen, New York 10924

Attorneys for Plaintiff

5 BY: MICHAEL SUSSMAN, ESQ.

6 ANDREW M. CUOMO

7 Attorney General of the State of New York

120 Broadway - 24th Floor

8 New York, New York 10271

Attorney for Defendants

9 BY: DANIEL SCHULZE, ESQ. (DS4198)

Assistant Attorney General

[Page 2]

1 Freed

2 this may help.

3 MR. SCHULZE: You can show him that.

4 Do you mind marking that?

5 MR. SUSSMAN: Yes.

6 MR. SCHULZE: He identified it now.

7 Do you want me to show him this?

8 MR. SUSSMAN: It is the same

9 document.

10 MR. SCHULZE: Mark an e-mail from me  
11 to Michael Sussman as Defendant Exhibit B, dated  
12 10/31/07, including the text of the Rule  
13 30(b)(6) Notice.14 (Exhibit D-B, E-mail, marked for  
15 identification.)16 Q. I show you what has been marked for  
17 identification as Defendant Exhibit B.

18 Is that what you were referring to?

19 A. As having seen before?

20 Q. Yes.

21 A. Yes.

22 Q. The first thing in that e-mail is a  
23 text of the Notice Pursuant to Rule 30(b)(6).

24 Do you see that?

25 A. I don't know what Rule 30(b)(6) is.

[Page 4]

1 Freed

2 MICHAEL FREED, called as a witness,  
3 having been first duly sworn, was  
4 examined and testified as follows:5 MR. SCHULZE: Mark the Notice of  
6 Deposition pursuant to Rule 30(b)(6) as  
7 Defendant Exhibit A.8 (Exhibit D-A, Notice, marked for  
9 identification.)

10 EXAMINATION BY

11 MR. SCHULZE:

12 Q. Good morning, Mr. Freed.

13 A. Good morning.

14 Q. I am Dan Schulze. I represent the  
15 Defendants in this case.

16 Do you understand that?

17 A. Yes.

18 Q. I am showing you what has been marked  
19 for identification as Defendant Exhibit A. This  
20 is the Notice of Deposition Pursuant to Rule  
21 30(b)(6).

22 Have you seen that document before?

23 A. I have not seen this particular  
24 document.

25 MR. SUSSMAN: If you show him this,

[Page 3]

1 Freed

2 Q. Do you see the very first language in  
3 the e-mail says, "Please take notice that  
4 pursuant to Rule 30 of the Federal Rules"? Do  
5 you see that?

6 A. Yes.

7 Q. And five topics are listed.

8 Do you see that?

9 A. Yes.

10 Q. Do I understand that you are here  
11 testifying as to the knowledge of Rockland  
12 Vending Corporation as to the five topics?13 A. As to the knowledge of Rockland  
14 Vending Corporation?

15 Q. Yes.

16 A. Yes.

17 Q. What did you do to prepare for this  
18 deposition?

19 A. What did I do? Absolutely nothing.

20 Q. Did you meet with your attorney?

21 A. Yes. I did meet with Michael Sussman  
22 last evening.

23 Q. How long?

24 A. About 45 minutes.

25 Q. Did you look at any documents?

[Page 5]

[2] (Pages 2 to 5)

1 Freed  
2 A. It was 8:30 last night. I am not  
3 sure exactly what I was looking at.  
4 Yes. I think we -- I think  
5 basically -- yes, I did. I looked over what I  
6 think was the complaint or basically the  
7 complaint. That was it.  
8 Q. Did you look at your Affidavit filed  
9 in this case?  
10 A. I think that is what it was, yes, an  
11 Affidavit.  
12 Q. Anything else?  
13 A. No. Not that I can remember.  
14 Q. Did you review any of the financial  
15 records of Rockland in preparation for this  
16 deposition?  
17 A. No.  
18 Q. Did you review any of the  
19 correspondence with documents in preparation for  
20 this deposition?  
21 A. No.  
22 Q. What is your current position?  
23 A. President of Rockland Vending  
24 Corporation.  
25 Q. How long have you been President of

[Page 6]

1 Freed  
2 Q. How many contracts do you have with  
3 the Federal Government?  
4 A. One.  
5 Q. What is that for?  
6 A. The Federal Courthouse in White  
7 Plains.  
8 Q. Did you have anything you wanted to  
9 add?  
10 A. Yes -- no, I thought about another  
11 contract that might have been federal, but it is  
12 not. It is state.  
13 Q. What was that?  
14 A. It is a state police -- actually -- I  
15 am sorry. It is part of the same contract.  
16 The Federal Courthouse was packaged  
17 in with another facility that I believe is a  
18 state facility.  
19 Q. Do you have any contacts with the  
20 Federal Judges in the White Plains courthouse?  
21 A. No.  
22 Q. Does anyone from your company deal  
23 with the Federal Judges in connection with the  
24 contracts?  
25 A. No.

[Page 8]

1 Freed  
2 Rockland?  
3 A. 33 years.  
4 Q. What does Rockland Vending  
5 Corporation do?  
6 A. Provide vending machine services to  
7 clients.  
8 Q. Both private and government?  
9 A. Yes.  
10 Q. Who do you currently have contracts  
11 with?  
12 A. Private accounts such as -- anything  
13 from -- private accounts, as well as government  
14 contracts.  
15 Q. Do you currently have government  
16 contracts?  
17 A. We currently do have government  
18 contracts, yes.  
19 Q. Who with?  
20 A. The Federal Government, the State of  
21 New York. We continued to have one, two with  
22 one so -- two contracts with the state.  
23 And we also have -- we have held in  
24 the past county contracts, federal, state and  
25 local government contracts.

[Page 7]

1 Freed  
2 Q. What are your contracts with New York  
3 State?  
4 A. New York State Correctional  
5 Facilities. We had 11 New York State  
6 Correctional Facilities, and I don't know -- I  
7 can't recall whether we have any other state  
8 contracts.  
9 I don't believe we do right now. We  
10 may have in the past. It has been 32 years.  
11 Q. Which of the contracts are still in  
12 effect?  
13 A. Fishkill Correctional Facility, which  
14 actually is bidding their vending with a  
15 mandatory site visit today. Fishkill and Green  
16 correctional facility.  
17 Q. Do you have any contracts with New  
18 York City?  
19 A. We had -- we have had contracts with  
20 New York City.  
21 Q. Do you have any currently?  
22 A. No.  
23 Q. How many employees does Rockland have  
24 currently?  
25 A. Currently?

[Page 9]

[3] (Pages 6 to 9)

1 Freed  
2 Q. Yes.  
3 A. I don't know exactly, but I would say  
4 probably -- the number I am thinking of is 13.  
5 Q. Do you employ drivers at Rockland?  
6 A. Yes.  
7 Q. The drivers are employees of Rockland  
8 and are not with the contractors; is that  
9 correct?  
10 A. Yes. They are employees of Rockland  
11 Vending.  
12 Q. Is Mr. Gallagher currently an  
13 employee of Rockland?  
14 A. Yes.  
15 Q. How many drivers does Rockland  
16 employ?  
17 A. Currently five.  
18 Q. Earlier this year, did Rockland  
19 employ more than five drivers?  
20 A. Yes.  
21 Q. How many drivers did it employ in  
22 January of this year?  
23 A. Okay. Again, I believe it was ten.  
24 It could have been 11, and it could have been  
25 nine. But I believe it was ten.

[Page 10]

1 Freed  
2 Q. How about in May of this year?  
3 A. I believe in May it was also -- in  
4 the beginning of May it was also ten.  
5 There has been no change between  
6 those times.  
7 Q. When did Rockland first enter into a  
8 contract with the Department of Correctional  
9 Services?  
10 A. I --  
11 Q. New York State Department of  
12 Correctional Services?  
13 A. Right. I believe eight years ago.  
14 MR. SUSSMAN: Do you want to call it  
15 DOCS rather than New York State Department of  
16 Correctional Services every time?  
17 MR. SCHULZE: Yes.  
18 Q. You will understand that?  
19 A. Yes.  
20 Q. Your first contract with DOCS was  
21 eight years ago?  
22 A. Again, without reviewing my boards,  
23 it is my best recollection that it was eight  
24 years ago. The way I am determining that is  
25 that this was a five-year contract.

[Page 11]

1 Freed  
2 And the last one was actually four  
3 years. I believe it was nine years ago. I  
4 believe it was nine years ago.  
5 Q. You understand that you are here  
6 testifying on behalf of Rockland?  
7 A. Yes. Where I don't have the  
8 knowledge, I am trying to express that, of what  
9 I am not exactly sure.  
10 Q. What was the first contract for?  
11 A. Vending machine services.  
12 Q. At which facility?  
13 A. Fishkill Correctional Facility.  
14 Q. Any other?  
15 A. That was the first one. They are bid  
16 individually.  
17 Q. How long did that contract last?  
18 A. That was a four-year contract.  
19 Q. After that contract expired, did you  
20 rebid?  
21 A. Yes.  
22 Q. What year was that?  
23 A. It was a two-year contract with two  
24 options for one year. It was four years  
25 after -- if it was nine ears -- it was five

[Page 12]

1 Freed  
2 years ago.  
3 Q. Is that contract currently in effect?  
4 A. Yes.  
5 Q. When you bid for that contract, did  
6 you bid for any other correctional facility  
7 contract?  
8 MR. SUSSMAN: You mean the one five  
9 years ago?  
10 MR. SCHULZE: Yes.  
11 A. At that time, no, it bid one at a  
12 time.  
13 Q. At the beginning of 2007, how many  
14 New York State correctional facilities did you  
15 have contracts with?  
16 MR. SUSSMAN: You mean January 1, in  
17 the beginning? So that there is no ambiguity.  
18 MR. SCHULZE: Yes. I am trying to  
19 get a framework here.  
20 A. Okay. Give me a second. Ten. I  
21 believe it was ten.  
22 Q. Was one of the facilities that you  
23 had a contract with the Shawangunk Correctional  
24 Facility?  
25 A. Yes.

[Page 13]

[4] (Pages 10 to 13)

1 Freed  
2 Q. When did that contract start?  
3 A. I am not sure.  
4 Q. Was it in effect in 2006?  
5 A. Yes.  
6 Q. Did the contract require you to pay  
7 commissions and a leasing fee for the space?  
8 A. Yes.  
9 Q. Were you ever late with payments for  
10 those commissions and lease fees?  
11 A. Yes.  
12 Q. How often?  
13 MR. SUSSMAN: You are talking about  
14 Shawangunk?  
15 MR. SCHULZE: Yes.  
16 A. At times we were late on commissions.  
17 How often -- at times we were current. I am not  
18 sure how to answer that question properly. We  
19 were late from time to time.  
20 Q. Were there times where you were as  
21 much as three months late in paying commissions?  
22 A. Yes.  
23 Q. Why was that?  
24 A. Financial -- we were just having --  
25 we were having trouble remaining profitable.

[Page 14]

1 Freed  
2 Q. When were you having trouble  
3 remaining profitable?  
4 A. At the facility I would say the  
5 last -- within the last year.  
6 Q. From when to when?  
7 A. The last year we were involved in the  
8 contract. And prior to that we were not late on  
9 commissions.  
10 Q. Specifically what time period?  
11 A. I don't have that information.  
12 Q. When you say last year, do you mean  
13 last year from today?  
14 A. No. I would say the final year we  
15 were at the facility we were running late on  
16 commissions.  
17 So if we pulled out -- I think the  
18 contract was over in May. So I would say the  
19 last year, May to May, approximately.  
20 Q. May 2006, May 2007; correct?  
21 A. Approximately.  
22 Q. Were you contacted by anyone in  
23 regards to the late payments?  
24 A. Yes.  
25 Q. Who?

[Page 15]

1 Freed  
2 A. We were contacted by the business  
3 officer at the facility and we were also  
4 contacted by Mr. Kidder.  
5 Q. Who is the business person at the  
6 facility?  
7 A. Roxanne Creen.  
8 Q. Did she contact you personally?  
9 A. Yes.  
10 Q. How many times?  
11 A. Several.  
12 Q. By telephone?  
13 A. I believe I received e-mail  
14 correspondence. And I might have also received  
15 a letter.  
16 And I don't recall any telephone  
17 calls, but it could have happened.  
18 Q. When is the first time she contacted  
19 you regarding late payments at Shawangunk?  
20 A. I'm sorry. I don't recall that.  
21 Q. Was it before 2006?  
22 A. That would have been 2005. No. I  
23 don't believe so. I don't believe so because I  
24 don't believe we were late prior to that.  
25 Q. At Shawangunk specifically?

[Page 16]

1 Freed  
2 A. That is correct.  
3 Q. How often were you contacted by Mr.  
4 Kidder?  
5 A. Once.  
6 Q. Was that a letter in November 2006?  
7 A. That is correct.  
8 Q. What did that letter say?  
9 MR. SUSSMAN: Objection.  
10 You can answer.  
11 A. The letter basically said that we  
12 needed to catch up on all commissions at all  
13 facilities.  
14 MR. SCHULZE: Mark as Defendant  
15 Exhibit C a letter from Stewart Kidder to  
16 Michael Freed dated November 9, 2006.  
17 (Exhibit D-C, Letter, 11/9/06, marked  
18 for identification.)  
19 Q. I hand you what has been marked for  
20 identification as Defendant Exhibit C marked for  
21 identification.  
22 Is that the letter to which you are  
23 referring?  
24 MR. SUSSMAN: Are you asking him if  
25 he received this copy or --

[Page 17]

1 Freed  
2 MR. SCHULZE: The question is, is  
3 that the letter to which he is referring in his  
4 testimony.  
5 A. Yes.  
6 Q. Your counsel is pointing to  
7 something. Is there something you want to add?  
8 A. No. Actually, the bcc, I am not sure  
9 if those correctional facilities were missed on  
10 my letter.  
11 Q. When you received this letter, you  
12 did not know whether it had been copied to the  
13 correctional facilities?  
14 A. When I got the letter, I did not know  
15 if it was copied to the other correctional  
16 facility.  
17 Q. You emphasize the words "got that  
18 letter."  
19 Did you later become aware of the  
20 copies to other correctional facilities?  
21 A. Yes.  
22 Q. How did you become aware of that?  
23 A. One of the stewards at one of the  
24 other facilities specifically called me and told  
25 me that we know what happened at -- at this  
[Page 18]

1 Freed  
2 facility.  
3 Q. What facility?  
4 A. That was Lincoln Correctional  
5 Facility.  
6 Q. This letter does not say anything  
7 that happened at Lincoln Correctional Facility?  
8 A. No.  
9 Q. Who was the steward you spoke to?  
10 A. Ms. Mason.  
11 Q. Did Miss Mason say that she had  
12 received this letter that is marked for  
13 identification as Defendant Exhibit C?  
14 A. No.  
15 Q. What do you recall that you believe  
16 led you to believe she received this letter?  
17 A. She told me -- I believe she  
18 explained to me that we all know what happened  
19 at Shawangunk and -- that she was taking action  
20 to make sure that the same thing happened at  
21 Lincoln.  
22 Q. What day was that?  
23 A. I don't recall.  
24 Q. What month was it?  
25 A. It was shortly after this letter.  
[Page 19]

1 Freed  
2 Q. What did you understand that comment  
3 about Shawangunk to be referring to?  
4 A. That our contract at Lincoln was  
5 being cancelled.  
6 Q. You were told that in 2006?  
7 A. It was shortly after the letter was  
8 received.  
9 Q. Did this call take place with you  
10 personally?  
11 A. Yes.  
12 Q. What did you say when you were told  
13 that?  
14 A. I don't recall. I was taken aback.  
15 Q. Taken aback?  
16 A. Yes, I was shocked.  
17 Q. At that time did you believe  
18 Shawangunk was cancelling their contract?  
19 A. No.  
20 Q. At that time did Lincoln in fact  
21 cancel their contract?  
22 A. No.  
23 MR. SCHULZE: Off the record.  
24 (Discussion off the record.)  
25 Q. In Mr. Kidder's letter of November  
[Page 20]

1 Freed  
2 9 --  
3 A. Excuse me. Can you give me a second?  
4 MR. SCHULZE: Note the witness is  
5 conferring with his counsel.  
6 A. I am sorry.  
7 Q. In the letter of November 9, 2006,  
8 did Mr. Kidder remind you that commissions had  
9 to be paid on time?  
10 MR. SUSSMAN: Objection. The letter  
11 speaks for itself.  
12 You can answer.  
13 A. Yes.  
14 Q. Is that what you understood?  
15 A. Yes.  
16 Q. Did you understand that he was  
17 telling you that if you did not pay the  
18 commissions on time that you could be  
19 disqualified from the State contract?  
20 A. Yes.  
21 MR. SCHULZE: Mark as Defendant  
22 Exhibit D a one-page letter dated November 13,  
23 2006 from Michael Freed to Stewart Kidder.  
24 (Exhibit D-D, Letter, 11/13/06,  
25 marked for identification.)  
[Page 21]

[6] (Pages 18 to 21)

1 Freed  
2 Q. I hand you what has been marked for  
3 identification as Defendant Exhibit D. Leaving  
4 aside the fax line at the top and the stamp on  
5 that, do you recognize this document?  
6 A. Yes.  
7 Q. Is that your signature at the bottom?  
8 A. Yes.  
9 Q. What is this document?  
10 A. It is a response to Mr. Kidder's  
11 letter.  
12 Q. In this letter you state, "All  
13 commission to all of your facilities are now  
14 paid in full as of this date."  
15 Was that true?  
16 A. I am sorry. Yes. I believe it was.  
17 I believe that it was when I wrote this letter.  
18 I am not absolutely sure.  
19 Q. Did you check that before you wrote  
20 the letter?  
21 A. I would have -- I am not sure. I  
22 would have thought that I would.  
23 Q. You don't remember doing so?  
24 A. No. Do I remember specifically going  
25 in and talking to my bookkeeper at the time?  
[Page 22]

1 Freed  
2 No. I don't recall that.  
3 Q. Who is your bookkeeper?  
4 A. At that time?  
5 Q. Yes.  
6 A. Her name is Gail Goodson.  
7 Q. Is your wife employed by Rockland  
8 Vending Corporation?  
9 A. Yes, she is.  
10 Q. What is her position?  
11 A. She is the Vice President.  
12 Q. After you wrote this letter to Mr.  
13 Kidder, did you have any further contact with  
14 him?  
15 MR. SUSSMAN: What time period are  
16 you speaking about; ever?  
17 MR. SCHULZE: Ever.  
18 A. Yes.  
19 Q. When?  
20 A. On the day of the incident at  
21 Shawangunk.  
22 Q. You are referring to May 9, 2007?  
23 A. Correct.  
24 Q. Between the date of this letter and  
25 May 9, 2007 you did not have any contact with  
[Page 23]

1 Freed  
2 Mr. Kidder?  
3 A. I don't recall having any further  
4 contact with Mr. Kidder.  
5 Q. Before you received his letter of  
6 November 2006, did you have any contact with Mr.  
7 Kidder?  
8 A. Before I received the letter, yes.  
9 Q. When did you have contact with him?  
10 MR. SUSSMAN: The letter of November  
11 9.  
12 MR. SCHULZE: Yes. I just said  
13 November. That's fine.  
14 A. Numerous occasions.  
15 Q. What about?  
16 A. Any specific issues we may have had  
17 with any of the facilities that were not  
18 addressed by the facility, at times I would  
19 contact Mr. Kidder or his associate.  
20 Q. Prior to this November 2006 letter,  
21 when was the last time you spoke to Mr. Kidder?  
22 A. I don't recall.  
23 Q. Is it fair to say that you worked out  
24 most problems with the facilities directly under  
25 these contracts?  
[Page 24]

1 Freed  
2 A. Wherever possible.  
3 Q. Was the steward at each facility the  
4 person you would normally contact?  
5 A. In each facility it was slightly  
6 different. Some of the stewards were delegated  
7 to someone below them.  
8 Q. Was Roxanne Creen your contact at  
9 Shawangunk?  
10 A. No, not normally.  
11 Q. Who was your normal contact?  
12 A. A woman by the name of Margie, and  
13 she worked in the business office.  
14 Q. After you wrote this letter in  
15 November 2006, did you fall delinquent in  
16 payment to Shawangunk again?  
17 A. Yes.  
18 Q. When was that?  
19 A. I don't recall.  
20 Q. When was the last time Rockland made  
21 a commission payment on the Shawangunk contract?  
22 A. I don't recall.  
23 Q. Did you review the records in  
24 preparation for this deposition?  
25 A. No.  
[Page 25]

[7] (Pages 22 to 25)

1 Freed  
2 Q. On the date of May 9, 2007, how  
3 delinquent were you on the Shawangunk contract?  
4 A. I am sorry. I don't recall. I don't  
5 have that.  
6 Q. Had you been contacted at that point  
7 by Roxanne Creen about the delinquencies.  
8 MR. SUSSMAN: Between the November  
9 and May period?  
10 MR. SCHULZE: Yes, that's fine. I  
11 said before May 9.  
12 A. Yes. I believe so, yes.  
13 MR. SUSSMAN: Between November and  
14 May, you believe you were contacted?  
15 THE WITNESS: Yes. I believe so.  
16 Q. How many times?  
17 A. I don't know.  
18 Q. What did she say to you when she  
19 contacted you?  
20 A. As I recall, they were threatening in  
21 nature, that we had better pay the commissions.  
22 And when I -- just that we had better  
23 pay the commissions.  
24 Q. When you say threatening in nature,  
25 what do you mean?

[Page 26]

1 Freed  
2 you paid a commission on that contract was;  
3 correct?  
4 A. I do not.  
5 Q. You don't recall exactly how much  
6 Rockland was behind in its payments on May 9,  
7 2007; is that correct?  
8 A. Correct.  
9 Q. Is it fair to say Rockland was at  
10 least several months behind at that point?  
11 A. It is possible.  
12 Q. Who would know?  
13 A. Going back to May, I would say either  
14 my wife or the bookkeeper at the time.  
15 Q. Who was the bookkeeper at the time?  
16 A. Gail Goodson.  
17 Q. Did your wife keep the books?  
18 A. The bookkeeper would keep the books.  
19 My wife is not a bookkeeper.  
20 Q. Did you review the complaint in this  
21 action before it was filed?  
22 A. Yes.  
23 Q. In that complaint, does it state that  
24 Rockland was delinquent in payment on May 9,  
25 2007.

[Page 28]

1 Freed  
2 A. They were very abrupt -- threatening  
3 is the wrong word. They were very abrupt and  
4 pay us our commission.  
5 Q. What does that mean?  
6 A. That's what she would say. Pay the  
7 commissions now. Pay the commissions.  
8 Q. Were these written communications or  
9 oral?  
10 A. I had received some e-mails from her.  
11 Q. Did you respond to any of those  
12 e-mails?  
13 A. I did, I believe. I don't recall  
14 specifically. But I think I would have  
15 responded to e-mails.  
16 Q. What did you say?  
17 A. I am sorry. I don't recall.  
18 Q. Did you pay?  
19 A. We would have -- I don't recall. I  
20 don't recall specifically an e-mail that I  
21 responded to about paying a commission.  
22 I know that we were behind. But we  
23 did pay commissions to try to catch up. We were  
24 trying to catch up.  
25 Q. You don't recall when the last time

[Page 27]

1 Freed  
2 MR. SUSSMAN: Objection to form.  
3 You can answer.  
4 A. I don't recall.  
5 Q. Is it fair to say that Rockland was  
6 delinquent in its contract on May 9, 2007?  
7 MR. SUSSMAN: Objection.  
8 A. Yes. I believe so.  
9 Q. But you are not sure about how much?  
10 A. That is correct. How many months, I  
11 don't know. It is paid monthly.  
12 Q. Did you go to Shawangunk Correctional  
13 Facility on May 9, 2007?  
14 A. No. May 9 was the day that it  
15 happened. I want to make sure that I have the  
16 dates correct. No.  
17 Q. That's the date you allege in your  
18 complaint, May 9, 2007?  
19 A. That is correct. It's not --  
20 Q. You don't have personal knowledge of  
21 what happened at Shawangunk on that date; is  
22 that correct?  
23 A. Yes, I do. I have my employee's  
24 statement to me. That's by personal knowledge.  
25 I am not sure what the definition of

[Page 29]

[8] (Pages 26 to 29)

1 Freed  
2 personal knowledge is. My employee told me  
3 exactly what happened.  
4 Q. You have personal knowledge of what  
5 your employee told you what happened, but you  
6 don't have personal knowledge if what he told  
7 you was true; is that correct?  
8 A. Correct.  
9 Q. What time does Rockland normally open  
10 for business?  
11 A. Five o'clock in the morning. That's  
12 what time my drivers report.  
13 Q. Who is present when your drivers  
14 report?  
15 A. A route supervisor opens the building  
16 so that the drivers can come in and then -- a  
17 route supervisor.  
18 Q. Does Rockland have a switchboard?  
19 A. We have a receptionist, yes.  
20 Q. What time does the receptionist start  
21 work?  
22 MR. SUSSMAN: You are talking about  
23 in May?  
24 MR. SCHULZE: I am talking in  
25 general. I will get to the specific date that

[Page 30]

1 Freed  
2 we are talking about, too.  
3 MR. SUSSMAN: Okay.  
4 A. Our receptionist reports, I believe,  
5 at 8:30 in the morning.  
6 Q. Who is your receptionist?  
7 A. Right now it is Diane. And I don't  
8 know her last name.  
9 Q. Who was it in May 2007?  
10 A. I believe it was Diane. I believe it  
11 was Diane.  
12 Q. Prior to Diane reporting to work,  
13 what happens if someone calls Rockland?  
14 A. It goes to a voicemail system.  
15 Q. Who can access that voicemail system?  
16 A. Diane, my wife and -- if they leave  
17 it in the general mailbox, it will go to Diane;  
18 or my wife would check the voicemail in the  
19 morning. Unless someone sends a message into a  
20 specific voice mail.  
21 Q. Do you know what time Diane was at  
22 work on May 9, 2007?  
23 A. I do not.  
24 Q. What time did you arrive at work on  
25 May 9, 2007?

[Page 31]

1 Freed  
2 A. I did not arrive at work that day.  
3 Q. Did your wife go to work that day?  
4 A. Yes.  
5 Q. Do you know what time she arrived at  
6 work?  
7 A. I do not.  
8 Q. Was she with you at all that day?  
9 A. No.  
10 Q. Where were you that day?  
11 A. I was in Maryland.  
12 Q. Who was the first person at Rockland  
13 Vending who learned of what had happened to Mr.  
14 Gallagher on May 9, 2007?  
15 MR. SUSSMAN: Objection.  
16 You can answer if you know.  
17 A. I don't know.  
18 Q. Do you understand that you are here  
19 testifying on behalf of Rockland Vending  
20 Corporation?  
21 A. Oh, absolutely.  
22 Q. But you don't know who was contacted?  
23 A. Who was the first person to answer  
24 the telephone when Mr. Gallagher called? I  
25 don't know.

[Page 32]

1 Freed  
2 Q. When did Mr. Gallagher call?  
3 A. Sometime during the day. I don't  
4 recall the exact time.  
5 Q. Is there any telephone record of  
6 this?  
7 A. I guess if you are asking if we keep  
8 a log of telephone calls that come in, no, no.  
9 Q. Besides a log of telephone calls, is  
10 there any other type of record with respect to  
11 calls?  
12 A. When it ultimately reached me, I  
13 started making notes.  
14 Q. Who did Mr. Gallagher speak to?  
15 A. He spoke to my wife.  
16 Q. Do you know what time?  
17 A. I don't.  
18 Q. Is there any way that you can  
19 estimate the time?  
20 A. No. I don't recall. It was sometime  
21 during the work day.  
22 I just don't recall what time it was.  
23 You know what? I seem to believe it was right  
24 about lunchtime. But I don't have any specific  
25 way to anchor that.

[Page 33]

[9] (Pages 30 to 33)

1 Freed  
2 Q. Why do you think it was possibly  
3 around lunchtime?  
4 A. Because I was going for lunch. I  
5 know exactly where I was. I was stopped in a  
6 shopping center getting ready to go into Dunkin'  
7 Donuts and grab a bagel.  
8 I really -- actually, to answer your  
9 question, I don't recall what time it was.  
10 Guessing is not something that I should be doing  
11 right here. And that was a guess.  
12 Q. I don't want a guess. I would like  
13 to have a fair estimate if you have one.  
14 A. I don't.  
15 Q. What did Mr. Gallagher say to your  
16 wife?  
17 A. He had told her that -- this is  
18 secondhand. Whatever I tell you now would be --  
19 if you are asking me specifically what he told  
20 my wife, I don't know.  
21 Q. Is your wife an employee of Rockland?  
22 A. Yes.  
23 Q. What did he say to your wife?  
24 A. I don't know. I was not there.  
25 Q. What did your wife say to him?  
[Page 34]

1 Freed  
2 A. Again, I don't know.  
3 Q. Did you speak to Mr. Gallagher that  
4 day?  
5 A. Yes.  
6 Q. When did you speak to him?  
7 A. After the telephone call that he made  
8 to my wife, and my wife's telephone call to me,  
9 I then contacted Mr. Gallagher on his cellular  
10 telephone.  
11 Q. Your wife contacted you after she  
12 spoke to Mr. Gallagher; is that correct?  
13 A. That is correct.  
14 Q. What did she say to you?  
15 A. She told me that one of our employees  
16 had been in prison in a facility against his  
17 will, and I was in --  
18 MR. SUSSMAN: He asked you what she  
19 said to you. That's what she said to you?  
20 THE WITNESS: Yes.  
21 A. She said that he has been in prison  
22 against his will. He had been held.  
23 Q. Did she explain?  
24 A. Yes. That was basically -- I think I  
25 asked her three times to repeat herself because  
[Page 35]

1 Freed  
2 I didn't understand what she was trying to tell  
3 me.  
4 But she told me that he had been  
5 locked in a room, and they took his money and  
6 he -- he was locked in a room and they took his  
7 money.  
8 Q. When you say "he," did she say who he  
9 was?  
10 A. Mr. Gallagher, Ken.  
11 Q. When you say his money, what did that  
12 refer to?  
13 A. The money in the vending machines.  
14 Q. That he was there to pick up?  
15 A. Not just money that he was -- yes,  
16 I'm sorry. Yes. Yes.  
17 Q. How long did your call last with your  
18 wife?  
19 A. I don't recall.  
20 Q. Did your wife receive a call from  
21 Roxanne Creen that day?  
22 A. I don't know.  
23 Q. Did you ask her?  
24 A. I don't recall if she had --  
25 throughout that whole day period you are saying?  
[Page 36]

1 Freed  
2 Q. Yes.  
3 A. I don't know.  
4 Q. Did your wife receive a call from  
5 Roxanne Creen before she talked to Mr.  
6 Gallagher?  
7 A. No.  
8 MR. SUSSMAN: When who talked to  
9 Gallagher.  
10 MR. SCHULZE: The wife.  
11 A. No.  
12 Q. How do you know that?  
13 A. Because we had no indication at all  
14 this was going to happen until it occurred. We  
15 had no communications with Shawangunk that day  
16 until this occurred.  
17 Q. When you say until this occurred,  
18 what are you referring to?  
19 A. Until we received a call from Ken  
20 Gallagher saying he had just gotten out of the  
21 facility.  
22 Q. Did Anyone at Rockland receive a call  
23 from Roxanne Creen shortly after the call from  
24 Mr. Gallagher?  
25 A. I don't believe so.  
[Page 37]

[10] (Pages 34 to 37)

1 Freed  
2 Q. Did you ask your wife if she received  
3 a call from Roxanne Creen that day?  
4 A. I don't recall.  
5 Q. You don't recall whether you asked  
6 her?  
7 A. I don't recall whether I asked her.  
8 My recollection -- my best recollection is that  
9 we did not.  
10 Q. After you spoke to your wife, you  
11 called Mr. Gallagher; is that correct?  
12 A. Yes.  
13 Q. About what time was that?  
14 A. I don't recall.  
15 Q. Did you reach him?  
16 A. I believe I did.  
17 Q. Did he say where he was?  
18 A. I don't recall.  
19 Q. Did you ask him where he was?  
20 A. I believe at that point he had left  
21 the facility and he was on the way back to our  
22 office.  
23 Q. What did he --  
24 A. That's my recollection.  
25 Q. In the call, what did he say to you  
[Page 38]

1 Freed  
2 and what did you say to him?  
3 A. I was -- I asked him to repeat what  
4 had occurred, and he did.  
5 Q. What specifically did he say?  
6 A. That he was held at the facility. He  
7 was not allowed to leave. He was not allowed to  
8 call our office.  
9 And then after approximately one  
10 hour, he gave them all the money, and they gave  
11 him a receipt and he left the facility.  
12 Q. Are those the specific words he used?  
13 A. No.  
14 Q. Tell me as much as you can about the  
15 specific words he used.  
16 A. I don't recall specifically. I  
17 recall that he was shaken up.  
18 Q. Did he mention Roxanne Creen?  
19 A. Yes.  
20 Q. What did he say about her?  
21 A. He said that her and two -- he said  
22 that she was involved -- that she and two of the  
23 employees of Shawangunk were the ones that held  
24 him in that room.  
25 Q. Room?  
[Page 39]

1 Freed  
2 A. It was the visiting room.  
3 Q. Did he describe how he was being  
4 held?  
5 MR. SUSSMAN: Objection to form. I  
6 am not clear what you mean by the question how  
7 he was being held.  
8 Q. You can answer.  
9 A. The door was locked and he was not  
10 allowed to leave.  
11 Q. Did he ask to leave?  
12 A. Yes.  
13 Q. He told you that?  
14 A. Specifically, yes.  
15 Q. Did he replenish the machines while  
16 he was there?  
17 A. I don't know.  
18 Q. Did he say whether he replenished the  
19 machines in this call?  
20 A. I don't recall.  
21 Q. Did Mr. Gallagher ask you to do  
22 anything in this call?  
23 A. No. I don't recall. I don't think  
24 so.  
25 Q. What was his voice like?  
[Page 40]

1 Freed  
2 A. He was shook up.  
3 Q. How could you tell?  
4 A. Just the sound of his voice.  
5 Q. Describe it.  
6 A. I think when you worked with someone  
7 for a time and talk to them on a regular basis,  
8 and that person is upset, you can tell that from  
9 his voice.  
10 I don't know how to describe that.  
11 He was not crying. He was just upset.  
12 Q. But you cannot describe the tone of  
13 his voice at all?  
14 A. I don't know how to. No.  
15 I remember that he sounded upset but.  
16 Specifically how that -- how he sounded I don't  
17 recall. I don't know if I can describe it. He  
18 didn't sound normal.  
19 Q. What did you do after you made the  
20 call to Mr. Gallagher?  
21 A. I called Mr. Kidder.  
22 Q. What time was that?  
23 A. Right after I spoke to Mr. Gallagher.  
24 Q. Did you reach him?  
25 A. Yes.  
[Page 41]

[11] (Pages 38 to 41)

<p>1 Freed</p> <p>2 Q. What did you say?</p> <p>3 A. I was -- I told him what happened at</p> <p>4 Shawangunk.</p> <p>5 Q. Specifically what did you say?</p> <p>6 A. I said that one of our -- I told him</p> <p>7 what happened, that one -- I am not going to</p> <p>8 quote because it is eight months ago -- but I</p> <p>9 told him that one of our employees was just held</p> <p>10 against his will at Shawangunk Correctional</p> <p>11 Facility for an hour, and was told that they had</p> <p>12 to give the money, all of the money in the</p> <p>13 machines and empty the machines and give them</p> <p>14 the money.</p> <p>15 MR. SUSSMAN: When he is asking you</p> <p>16 to recall, give him the sum and substance. If</p> <p>17 you don't remember the exact words, give him the</p> <p>18 sum and substance of what you do remember.</p> <p>19 Obviously, if you remember, then tell</p> <p>20 him exactly. You can give him the sum and</p> <p>21 substance if you don't remember.</p> <p>22 Q. What did he say to you?</p> <p>23 A. He was aware of it.</p> <p>24 Q. Meaning what?</p> <p>25 A. He knew about it. He knew that it</p> <p style="text-align: right;">[Page 42]</p>	<p>1 Freed</p> <p>2 the law to do that.</p> <p>3 Q. Did you explain that?</p> <p>4 A. I believe I did tell him.</p> <p>5 Q. Did you explain what you meant by</p> <p>6 that?</p> <p>7 A. Yes.</p> <p>8 Q. What did you say?</p> <p>9 A. I told him that it was grand larceny</p> <p>10 and extortion. And the sum and substance of</p> <p>11 what I said is that it was against the law. I</p> <p>12 believe I did mention those words.</p> <p>13 Q. What did he say in response to that?</p> <p>14 A. He told me that she was advised by an</p> <p>15 attorney in Albany to take the action that she</p> <p>16 did, and that he gave me the name of the</p> <p>17 attorney in Albany if I wanted to contact him.</p> <p>18 Q. What was the name?</p> <p>19 A. I don't recall. I do have -- I don't</p> <p>20 recall.</p> <p>21 Q. Does the name George Glassanos ring a</p> <p>22 bell?</p> <p>23 A. It does not ring a bell.</p> <p>24 Q. Did you contact that attorney?</p> <p>25 A. No.</p> <p style="text-align: right;">[Page 44]</p>
<p>1 Freed</p> <p>2 was going to occur and he agreed with it. I</p> <p>3 remember this --</p> <p>4 Q. What did he say?</p> <p>5 A. He said I know. I know that</p> <p>6 happened. And I remember I said I was -- I said</p> <p>7 you knew that occurred? I remember repeating</p> <p>8 myself like twice. You knew that occurred? I</p> <p>9 do remember that.</p> <p>10 He was very specific that he did know</p> <p>11 that was going to occur and --</p> <p>12 Q. What did you understand that to refer</p> <p>13 to?</p> <p>14 A. He knew they were going to hold my</p> <p>15 employee in that facility and take his money.</p> <p>16 Q. Take his money meaning what?</p> <p>17 A. Take the company's funds.</p> <p>18 Q. Take the money out of the vending</p> <p>19 machine?</p> <p>20 A. Correct.</p> <p>21 Q. What did you say?</p> <p>22 MR. SUSSMAN: Beyond what you already</p> <p>23 told him. In the flow of the conversation, was</p> <p>24 anything said next?</p> <p>25 A. I believe I told him it was against</p> <p style="text-align: right;">[Page 43]</p>	<p>1 Freed</p> <p>2 Q. Why not?</p> <p>3 A. Because I didn't think whatever he</p> <p>4 had to say was relevant.</p> <p>5 Q. What do you mean?</p> <p>6 A. I had already spoken to a close</p> <p>7 friend of mine who is an attorney, and he told</p> <p>8 me --</p> <p>9 MR. SUSSMAN: You don't have to go</p> <p>10 into that.</p> <p>11 A. I had spoken to an attorney. And I</p> <p>12 didn't agree with that assessment, and there was</p> <p>13 no point in talking to Mr. Kidder.</p> <p>14 Q. Who was the attorney?</p> <p>15 A. Howard Kave.</p> <p>16 MR. SCHULZE: Are you asserting the</p> <p>17 communications were privileged?</p> <p>18 MR. SUSSMAN: Yes. This is an</p> <p>19 attorney that he has used in consulting on a</p> <p>20 number of prior occasions.</p> <p>21 In that time he was acting in that</p> <p>22 role as I understand. You can inquire about</p> <p>23 that. But that's my understanding of the</p> <p>24 relationship between Kave and Freed at that</p> <p>25 time.</p> <p style="text-align: right;">[Page 45]</p>

[12] (Pages 42 to 45)

1 Freed  
2 Q. Is Mr. Kave an attorney for Rockland  
3 Vending?  
4 A. He is more of a friend.  
5 Q. Does he act as your personal  
6 attorney?  
7 A. No. I don't believe so.  
8 Q. Did you --  
9 A. I'm sorry.  
10 Q. Go ahead.  
11 A. He did on one occasion.  
12 Q. What was that about?  
13 A. A television set that we had at home  
14 that had a warranty on it. And the warranty  
15 company didn't cover it.  
16 And so Howard wrote a letter for me,  
17 and then they covered it.  
18 Q. That's enough. That's fine.  
19 MR. SUSSMAN: It is your privilege to  
20 assert and not mine. If you wish to disclose  
21 the conversation that you had with Mr. Kave, you  
22 are allowed to do that.  
23 It is not Mr. Kave's decision, nor my  
24 decision. Counsel is free to inquire as he has,  
25 and you can tell him.

[Page 46]

1 Freed  
2 If you believe that you were  
3 consulting with him for legal advice, then my  
4 opinion is that you can assert the privilege,  
5 and it will have to be decided by a judge if  
6 counsel want to argue that point.  
7 Q. What did Mr. Kave say to you in with  
8 regard to whether the actions were legal or not?  
9 A. He said they were illegal.  
10 Q. Did he explain why?  
11 A. Yes.  
12 Q. What did he say?  
13 A. Can I hold that?  
14 Q. No, not now. Because you have waived  
15 the privilege.  
16 A. Okay. I -- I called Mr. Kave as soon  
17 as I heard about this because I had no idea that  
18 someone could do that.  
19 Q. When you say as soon as you heard  
20 about this, you mean after your call with Mr.  
21 Gallagher?  
22 A. Correct.  
23 Q. Then you spoke to Mr. Kave?  
24 A. Yes, correct.  
25 Q. This is before you called Mr. Kidder;

[Page 47]

1 Freed  
2 correct?  
3 A. Yes.  
4 Q. What did you say to Mr. Kave, and  
5 what did he say to you?  
6 A. I explained that a driver had gone  
7 into a facility to service and check the  
8 machines.  
9 He had been held at the facility and  
10 they had taken the collection -- all of the  
11 money out of the vending machines.  
12 I asked him if they can do that. Mr.  
13 Kave told me that is grand larceny, extortion.  
14 I think he mentioned false  
15 imprisonment, but I am not sure this he did or  
16 not.  
17 He advised me to have our driver go  
18 immediately to the State Police and report it.  
19 Q. Did you speak to him as to whether  
20 the contract at issue allowed DOCS to collect  
21 those monies from the driver?  
22 A. I did not.  
23 Q. Why not?  
24 A. I did not. I just didn't. I told  
25 him what had occurred on that specific day.

[Page 48]

1 Freed  
2 Q. Did you tell him that the monies DOCS  
3 took belonged to Rockland?  
4 A. Yes.  
5 Q. Based on this conversation with Mr.  
6 Kave, you decided that it would not serve any  
7 purpose to call the counsel at DOCS?  
8 MR. SUSSMAN: At DOCS or the  
9 counsel -- you have not established who the  
10 counsel is yet.  
11 I don't know if he was an AG at DOCS  
12 or whatever.  
13 MR. SCHULZE: Let me go back then.  
14 Q. You testified that Mr. Kidder in his  
15 call with you said that counsel had told Ms.  
16 Creen to take the action she did; correct?  
17 A. That is correct.  
18 Q. Who did he say the counsel was?  
19 A. I don't recall the name, but he did  
20 specify a name.  
21 Q. Did he give you contact information  
22 for that person?  
23 A. Yes.  
24 Q. Do you remember the telephone number?  
25 A. No, not offhand.

[Page 49]

[13] (Pages 46 to 49)

1 Freed  
2 Q. Do you have it written down?  
3 A. Yes.  
4 Q. Do you have the name written down?  
5 A. Yes, I do.  
6 Q. Is the counsel an attorney with DOCS?  
7 A. He did not specify that I can recall.  
8 Q. Who did you understand the counsel to  
9 be?  
10 A. The department.  
11 Q. Who did you understand the counsel to  
12 be representing?  
13 A. The Department of Corrections.  
14 Q. And you decided not to call this  
15 counsel because of your conversation with Mr.  
16 Kave; correct?  
17 A. That is correct.  
18 Q. What did you do next?  
19 A. After speaking to Mr. Kidder?  
20 Q. Yes.  
21 A. I believe I checked back to my office  
22 to make sure that Mr. Gallagher was okay.  
23 Q. Was Mr. Gallagher at your office at  
24 that time?  
25 A. I believe he was. I don't recall. I

[Page 50]

1 Freed  
2 don't recall if they were checking on him or  
3 what, but I believe he was.  
4 Excuse me. No. I am sorry. We  
5 direct Mr. Gallagher to go to the State Police.  
6 I did contact Mr. Gallagher again, and I had  
7 called and directed him to the State Police.  
8 MR. SCHULZE: Let's take a short  
9 break.  
10 (Recess taken at this time.)  
11 Q. When you spoke to Mr. Gallagher, did  
12 he say how long he had been detained?  
13 MR. SUSSMAN: You are talking about  
14 the first time? He already answered that, but  
15 he can answer it again.  
16 MR. SCHULZE: Yes.  
17 A. He said about one hour.  
18 Q. Other than what he told you, do you  
19 have any knowledge?  
20 A. No.  
21 Q. When you told Mr. Gallagher to go to  
22 the State Police, what did he say?  
23 A. He said he was fine. He said okay.  
24 Q. Did you order him to do that?  
25 A. I told him to go to the State Police.

[Page 51]

1 Freed  
2 I don't know if you call it an order;  
3 a supervisor, yes.  
4 Q. It was more than a suggestion; is  
5 that fair?  
6 A. Yes. I told him to go.  
7 Q. Do you know whether he went to the  
8 State Police?  
9 A. Yes, he did.  
10 Q. Were you present?  
11 A. No.  
12 Q. Do you know what he said to the State  
13 Police?  
14 A. I believe he described what had  
15 occurred.  
16 Q. Why do you believe that?  
17 A. Because that's what he went to the  
18 State Police to do. I also -- that's why he  
19 went to the State Police barracks.  
20 Q. What time did he go to the barracks?  
21 A. I believe it was in the afternoon.  
22 Q. Do you know who he spoke to?  
23 A. I don't know the name of the officer.  
24 Q. Did he tell you the name of the  
25 officer?

[Page 52]

1 Freed  
2 A. Yes.  
3 Q. When did he tell you the name of the  
4 officer?  
5 A. In a conversation after he left the  
6 State Police barracks.  
7 Q. What were you doing while he was at  
8 the State Police barracks?  
9 A. I was working in Maryland.  
10 Q. Did you talk to the State Police that  
11 day?  
12 A. Yes.  
13 Q. Who did you speak to?  
14 A. The officer -- I don't recall his  
15 name.  
16 Q. You were saying the officer who  
17 did --  
18 A. The officer who did the  
19 investigation, but I don't know his name.  
20 Q. Did you receive a call from that  
21 officer?  
22 A. Yes.  
23 Q. Do you recall what time?  
24 A. Later on in the day.  
25 Q. What did the officer say to you, and

[Page 53]

[14] (Pages 50 to 53)

1 Freed  
2 what did you say to him?  
3 A. The officer told me that he had  
4 gotten a report from Ken, and was going to do an  
5 investigation.  
6 Q. Ken is Mr. Gallagher?  
7 A. That is correct.  
8 Q. Did he ask you any questions?  
9 A. I don't recall having been asked any  
10 questions, no. He might have asked me my  
11 relationship to the company. I think that was  
12 the only question.  
13 Q. Do you know how he got your name?  
14 A. The officer?  
15 Q. Yes.  
16 A. Yes. I called the State Police  
17 barracks to see if Ken could go in and file a  
18 report.  
19 Q. Who did you talk to at the barracks?  
20 A. I don't recall. It was a state  
21 trooper.  
22 Q. Did the trooper tell you to come in  
23 and file a report?  
24 A. Yes. He said have Ken go up there  
25 and file the report. Not myself.

[Page 54]

1 Freed  
2 Q. Did he explain why?  
3 A. No.  
4 Q. Have you seen that police report?  
5 A. No.  
6 Q. After the State Police called you, do  
7 you know what they did to investigate?  
8 A. I don't know specifically what they  
9 did. I don't know what action they took.  
10 Q. Do you know generally?  
11 A. I think they went up -- I think the  
12 officer went up and spoke to someone at  
13 Shawangunk. I do recall that.  
14 Q. What is the basis for that?  
15 A. My recollection?  
16 Q. Yes.  
17 A. Because I did receive a call from the  
18 officer at the conclusion of the investigation.  
19 Q. When was that?  
20 A. Later that evening.  
21 Q. So this investigation was finished on  
22 the same day?  
23 A. I believe so.  
24 Q. What did the officer say when he  
25 called you later that evening?

[Page 55]

1 Freed  
2 A. To best of my recollection, it was  
3 that he could not pursue it any further.  
4 Q. Did he explain why?  
5 A. No.  
6 Q. What did you say?  
7 A. I told him that I thought a crime had  
8 been committed, and I was under the belief that  
9 an action should be taken.  
10 Q. Did the officer state he did not  
11 believe that a crime had been committed?  
12 A. No.  
13 Q. And he didn't explain why he was not  
14 pursuing the investigation further?  
15 A. No.  
16 Q. You said that you had reached the  
17 conclusion that he had spoken to someone at  
18 Shawangunk.  
19 What did he say in that regard?  
20 A. I don't recall. I recall that -- my  
21 recollection is that he did speak to someone at  
22 Shawangunk.  
23 My recollection is that he actually  
24 went to the facility and spoke to someone, but I  
25 don't recall why I have that recollection.

[Page 56]

1 Freed  
2 Q. It would have been based on him  
3 telling you that in the telephone call?  
4 A. I would think so, yes.  
5 Q. Would you have any other way of  
6 knowing that?  
7 A. No.  
8 Q. Did you see Mr. Gallagher that day?  
9 A. No.  
10 Q. Did your wife see him?  
11 A. Yes.  
12 Q. Did you talk to your wife?  
13 A. Yes.  
14 Q. What did she say about Mr. Gallagher?  
15 A. I remember knowing that he was upset.  
16 Just that he was upset.  
17 Q. What were his duties on this day?  
18 A. He was to go out and service several  
19 of our accounts, fill machines.  
20 Q. What other account besides  
21 Shawangunk?  
22 A. On that specific date, I don't know,  
23 because the route changes from day to day.  
24 Q. Did he service other accounts that  
25 day?

[Page 57]

[15] (Pages 54 to 57)

1 Freed  
 2 A. Yes. Prior to Shawangunk.  
 3 Q. What other accounts did he service?  
 4 A. Again, I don't know because his route  
 5 will change from day to day. Monday might be  
 6 different than a Tuesday. And Tuesday may be  
 7 different than a Wednesday. I don't know what  
 8 accounts he serviced that day.  
 9 Q. Is there any written record of the  
 10 routed he had that day?  
 11 A. Yes.  
 12 Q. Who keeps that record?  
 13 A. There was a record at that time. We  
 14 write it out. We have where he should be going.  
 15 When you say keep that record, I am  
 16 not sure that it is kept past that, once he  
 17 completes that day.  
 18 Q. What is the corporate policy  
 19 regarding those?  
 20 A. Once the day is done, you go on to  
 21 the next one --  
 22 MR. SUSSMAN: You are asking if there  
 23 is a regular policy keeping the drivers route  
 24 from the prior days?  
 25 Q. A way you maintain those somewhere.

[Page 58]

1 Freed  
 2 Q. What happened to the other accounts  
 3 that he was supposed to service that day?  
 4 A. They would have been serviced. I  
 5 would think they would be service the following  
 6 day.  
 7 Q. Did Mr. Gallagher work the following  
 8 day?  
 9 A. I don't know.  
 10 Q. Who would know?  
 11 A. My wife.  
 12 Q. Other than the people you testified  
 13 about, did you speak to anybody else about the  
 14 events at Shawangunk?  
 15 A. Yes. I believe I did.  
 16 Q. Who?  
 17 A. The Ulster County District Attorney.  
 18 And that might have been May 9 or the morning  
 19 after.  
 20 But my recollection is when I heard  
 21 from the State Police, I contacted the District  
 22 Attorney.  
 23 Q. When you heard from the State Police  
 24 that they were done with the investigation?  
 25 A. Correct.

[Page 60]

1 Freed  
 2 Is it on a computer, on paper, or in some other  
 3 form?  
 4 MR. SCHULZE: Right.  
 5 A. Yes.  
 6 MR. SUSSMAN: From last May to now,  
 7 does somebody in your company keep them?  
 8 A. I don't know. I don't know.  
 9 Q. Did you ask?  
 10 A. Did I ask where he had been before  
 11 that account?  
 12 Q. No. Did you ask if those records are  
 13 kept?  
 14 A. No. I never asked that.  
 15 Q. Did he go and service any accounts  
 16 after what happened at Shawangunk?  
 17 A. I don't know.  
 18 Q. Did you ask him?  
 19 A. No. Actually -- I am sorry. I did  
 20 not.  
 21 Q. How do you know that?  
 22 A. Because I sent him to the State  
 23 Police.  
 24 Q. Did that take all day?  
 25 A. I think so.

[Page 59]

1 Freed  
 2 Q. Who did you speak to at the Ulster  
 3 County DA?  
 4 A. Paul O'Neal. There is only one way I  
 5 would remember that name.  
 6 Q. Are you a Yankees fan?  
 7 A. Yes.  
 8 Q. What did you say to Mr. O'Neal, and  
 9 he to you?  
 10 A. He told me that it was a civil  
 11 matter.  
 12 Q. Did he explain why?  
 13 A. Yes, I -- I think he did. I think he  
 14 spent a bit of time explaining that it was  
 15 something that had to be taken up in civil court  
 16 because we owed them money, and they took the  
 17 money.  
 18 Yes. He indicated it should be in  
 19 civil court.  
 20 Q. Do you recall anything more specific  
 21 than that?  
 22 A. No. Just being dismissed.  
 23 Q. How long did that conversation take?  
 24 A. Probably not more than ten minutes.  
 25 Q. Did you speak to anyone else at DOCS

[Page 61]

[16] (Pages 58 to 61)

1 Freed  
2 on May 9?  
3 A. Not after I spoke to Mr. Kidder.  
4 Q. Did anyone at Rockland speak to  
5 anyone else on May 9?  
6 A. I don't believe so.  
7 Q. On May 10, did anyone at Rockland  
8 receive a call from Roxanne Creen?  
9 A. I don't know.  
10 Q. Who would know?  
11 A. The only other one who would have  
12 talked to Ms. Creen would be my wife.  
13 Q. Did your wife talk to Roxanne Creen  
14 that day?  
15 A. I don't know. I don't recall a  
16 conversation. I don't recall anything about  
17 that. Not to my knowledge.  
18 Q. On May 10, did you understand that  
19 the contract with Shawangunk was still in  
20 effect?  
21 A. Yes.  
22 Q. When was the next time that the  
23 machines were to be serviced after May 9 at  
24 Shawangunk?  
25 A. Either the next day or the day after.  
[Page 62]

1 Freed  
2 I believe it was on an every other day schedule.  
3 Q. Did Rockland send anyone to  
4 Shawangunk on May 10?  
5 A. No.  
6 Q. Why not?  
7 A. Because we were afraid to.  
8 Q. What do you mean?  
9 A. One of my employees had just been  
10 incarcerated at that facility, and we were not  
11 going back.  
12 Q. When you say we were not going back,  
13 what do you mean?  
14 A. I was not sending anybody else to  
15 that facility. Ms. Creen -- I considered Ms.  
16 Creen to be a danger to my employees. Ms. Creen  
17 also stated that she would do it again.  
18 Q. When did she state that?  
19 A. I believe she told that -- if I  
20 remember correctly, she told that either to  
21 myself or to Ken.  
22 No. She couldn't have told it to me.  
23 I don't think I talked to her after that. I  
24 believe she told that to Ken.  
25 Q. Ken who?  
[Page 63]

1 Freed  
2 A. Mr. Gallagher.  
3 Q. Is this something that Ken said to  
4 you?  
5 A. Yes. I believe so.  
6 Q. When did he say that to you?  
7 A. I don't recall.  
8 Q. Was it on May 9?  
9 A. I don't recall.  
10 Q. Did Rockland send anyone to  
11 Shawangunk on May 11?  
12 A. No.  
13 Q. Did you speak to Roxanne Creen on May  
14 11?  
15 A. No.  
16 Q. Did anyone at Rockland speak to  
17 Roxanne Creen on May 11?  
18 A. I don't know.  
19 Q. Who would know?  
20 A. Whoever talked to her. I don't know  
21 of any conversation that took place.  
22 Q. Did Rockland receive a call from  
23 anyone at DOCS on May 10?  
24 A. I don't recall.  
25 Q. Did Rockland receive any written  
[Page 64]

1 Freed  
2 communication from anyone at DOCS on May 10?  
3 A. Not to my recollection. I don't  
4 recall.  
5 Q. Did Rockland speak to anyone from  
6 DOCS on May 11?  
7 A. I don't recall. Not to my knowledge.  
8 Q. Did Rockland receive a written  
9 communication from anyone at DOCS on May 11?  
10 A. I don't recall.  
11 Q. Did there come a time when Rockland  
12 was notified that DOCS was terminating the  
13 contract at Shawangunk?  
14 A. Yes.  
15 Q. When was that?  
16 A. I don't know. I don't recall.  
17 Q. How was Rockland notified?  
18 A. Again, I don't recall.  
19 Q. Who would be able to answer these  
20 questions?  
21 A. I am not sure. I am not sure.  
22 We were notified that the contract  
23 was being terminated, but I don't know -- I  
24 don't know who it was that received that  
25 notification or how it came.  
[Page 65]

[17] (Pages 62 to 65)

<p>1 Freed</p> <p>2 Q. How did you personally learn of it?</p> <p>3 A. I believe it was -- it had to be a</p> <p>4 written communication. At one point a letter</p> <p>5 was put on my desk they were terminating our</p> <p>6 contract.</p> <p>7 Q. But you don't remember when this was?</p> <p>8 A. No. I believe it was the beginning</p> <p>9 of the next week. And the reason that I am</p> <p>10 surmising that is because of the timing of how</p> <p>11 things went down.</p> <p>12 I believe it was the beginning of the</p> <p>13 following week.</p> <p>14 Q. Did the written communication state</p> <p>15 the reason for termination?</p> <p>16 A. I don't recall.</p> <p>17 Q. Did the written communication state</p> <p>18 that monies were owed by Rockland?</p> <p>19 A. I don't know.</p> <p>20 Q. Did the written communication state</p> <p>21 that the vending machines were going to be held</p> <p>22 at Shawangunk?</p> <p>23 A. The vending machines were held by</p> <p>24 Shawangunk. And whether the written</p> <p>25 communication specifically stated that, I don't</p> <p style="text-align: right;">[Page 66]</p>	<p>1 Freed</p> <p>2 A. Not specifically, no.</p> <p>3 Q. Do you know whether it goes into an</p> <p>4 inmate account?</p> <p>5 A. I have been told that it does.</p> <p>6 Q. Do you know what that account is used</p> <p>7 for?</p> <p>8 A. I have been told that it goes towards</p> <p>9 amenities for the inmates; cable TV and things</p> <p>10 like that.</p> <p>11 Q. Do you know if DOCS makes a profit on</p> <p>12 the vending machine contracts?</p> <p>13 A. I have no knowledge.</p> <p>14 Q. Until they picked up the vending</p> <p>15 machines, is it fair to say that after May 9,</p> <p>16 2007, Rockland never sent another driver to</p> <p>17 Shawangunk?</p> <p>18 A. Correct.</p> <p>19 Q. Do you know who made the decision to</p> <p>20 cancel the contract at Shawangunk?</p> <p>21 A. Department of Corrections. I don't</p> <p>22 know specifically who.</p> <p>23 Q. Do you know why they cancelled it?</p> <p>24 A. Based on the letters, I would assume</p> <p>25 it was either because of late commissions or our</p> <p style="text-align: right;">[Page 68]</p>
<p>1 Freed</p> <p>2 recall because I don't recall the written</p> <p>3 communication.</p> <p>4 Q. Over the term of your contract with</p> <p>5 Shawangunk, how often did a typical vending</p> <p>6 machine need to be replenished?</p> <p>7 A. Either daily, or every other day for</p> <p>8 some of the machines.</p> <p>9 Q. What happens if they are not</p> <p>10 replenished daily or every other day?</p> <p>11 A. They will empty out.</p> <p>12 Q. If they empty out, then there will</p> <p>13 not be any of the vended products for the</p> <p>14 inmates to obtain; is that correct?</p> <p>15 A. That is correct -- actually, that's</p> <p>16 not correct. The families buy the product, but</p> <p>17 the inmates cannot buy products from the</p> <p>18 machine, but they can eat them.</p> <p>19 Q. In the visitors room?</p> <p>20 A. Yes.</p> <p>21 Q. Are there vending machines in the</p> <p>22 officers lounge as well at Shawangunk?</p> <p>23 A. In the employee area, yes.</p> <p>24 Q. Do you know what is done with the</p> <p>25 money that you pay in commissions to DOCS?</p> <p style="text-align: right;">[Page 67]</p>	<p>1 Freed</p> <p>2 refusal to re-enter the facility.</p> <p>3 Q. How many of your contracts with any</p> <p>4 of DOCS correctional facilities were terminated</p> <p>5 before their expiration date?</p> <p>6 A. I don't know offhand.</p> <p>7 Q. Who would know?</p> <p>8 A. I would, after looking at the record,</p> <p>9 after reviewing.</p> <p>10 Q. When you say record, do you mean</p> <p>11 Rockland's records?</p> <p>12 A. Yes, yes.</p> <p>13 Q. Do Rockland's contracts with the</p> <p>14 correctional facilities have optional renewal</p> <p>15 provisions?</p> <p>16 A. Yes.</p> <p>17 Q. And to exercise the renewal, both</p> <p>18 sides need to agree?</p> <p>19 A. That is correct.</p> <p>20 Q. Either Rockland or DOCS were free to</p> <p>21 walk away from the contract rather than renew</p> <p>22 it; is that correct?</p> <p>23 A. Yes, that is correct.</p> <p>24 Q. Do you know how many of the DOCS</p> <p>25 facilities chose not to exercise a renewal</p> <p style="text-align: right;">[Page 69]</p>

[18] (Pages 66 to 69)

1 Freed  
2 option?  
3 A. Several.  
4 Q. Which ones?  
5 A. Eastern, Ulster, Woodburn, Fulton. I  
6 believe that those are the ones that did not  
7 exercise their option.  
8 Q. Did Rockland have a contract with  
9 Lincoln Correctional Facility?  
10 A. Yes, we did.  
11 Q. When did that expire?  
12 A. I believe it did not. It was  
13 terminated prior. I believe it was terminated  
14 prior to the expiration of the contract.  
15 Q. What do you base that belief on?  
16 A. The fact that they stopped letting us  
17 into the facility, and a telephone call telling  
18 us to take the machines out.  
19 Q. Would it refresh your recollection if  
20 I told you that the contract expired in March  
21 2007, and Rockland continued providing services  
22 after the expiration date?  
23 A. That's not my recollection.  
24 Q. Okay.  
25 A. Without the specific contracts here  
[Page 70]

1 Freed  
2 in front of me, I can only go by what I recall.  
3 That's not my recollection.  
4 Q. You understand that you are here  
5 testifying on behalf of Rockland; is that  
6 correct?  
7 A. Oh, absolutely.  
8 Q. Did Rockland ever claim it didn't owe  
9 any commissions because there was no written  
10 contract in effect with DOCS?  
11 MR. SUSSMAN: With DOCS.  
12 A. I don't recall saying that.  
13 Q. Do you know whether --  
14 A. I don't recall that. I don't recall  
15 that.  
16 Q. If one of the contracts reached its  
17 expiration date and DOCS asked you to stay, and  
18 you continued to provide vending services for  
19 another month, would you owe DOCS commissions  
20 for that month?  
21 A. I don't believe we would.  
22 Q. Why not?  
23 A. Because in my estimate if a contract  
24 is expired and we continued to service that  
25 account, I don't believe that we should be  
[Page 71]

1 Freed  
2 paying commissions.  
3 Q. Other than Fishkill, are there any  
4 Rockland vending machines at any DOCS facilities  
5 currently?  
6 A. Yes.  
7 Q. Where?  
8 A. Green Correctional Facility.  
9 Q. Is that contract still in effect?  
10 A. I believe it is.  
11 Q. What did you expect DOCS to do when  
12 they were informed you that your drivers would  
13 no longer enter Shawangunk Correctional  
14 Facility?  
15 A. At that point my concern was for the  
16 safety of my drivers, first and foremost. And I  
17 was totally convinced that my drivers were not  
18 safe.  
19 I would not ask a driver to go some  
20 place where he was not safe.  
21 Q. Okay. That's your motive. What did  
22 you expect DOCS to do?  
23 A. After what occurred at Shawangunk, I  
24 had no idea of what Shawangunk was capable of  
25 doing, or DOCS.  
[Page 72]

1 Freed  
2 We had a situation that had occurred  
3 and the person who was the utmost -- had the  
4 utmost responsibility totally agreed with it.  
5 Q. If your driver did not enter the  
6 Shawangunk facility, was there any way that  
7 Rockland could continue to perform its contract?  
8 MR. SUSSMAN: He did not testify that  
9 the drivers would not enter the facility. He  
10 directed them not to enter the facility.  
11 You can answer.  
12 A. I was hoping that there would be some  
13 dialogue. I guess, based on what occurred, we  
14 couldn't service the account.  
15 Q. With respect to your counsel's  
16 objection, I will make it clear.  
17 You are the one who told the drivers  
18 not to go to Shawangunk; is that correct?  
19 A. Yes.  
20 Q. Could you --  
21 A. Can I go back to correct?  
22 Q. Yes.  
23 A. Based on the last conversation, there  
24 was some conversation from Shawangunk in the  
25 days after that because the weekend was coming  
[Page 73]

[19] (Pages 70 to 73)

1 Freed  
2 up.  
3 And I recall them contacting us to  
4 find out if we would be servicing them on that  
5 specific weekend. There was some conversations.  
6 I was not involved in it.  
7 Q. What did Rockland tell Shawangunk in  
8 that regard?  
9 A. I don't know what they told them. I  
10 can tell you, and it is not personal, but based  
11 on what occurred, I would not allow my people to  
12 go back in there.  
13 Q. And you told your people that;  
14 correct?  
15 A. Absolutely.  
16 Q. Did Rockland have a contract with  
17 Cocksackie?  
18 A. Yes.  
19 Q. When did that expire?  
20 A. I don't believe -- and again, without  
21 the contracts in front of me -- that did expire.  
22 Q. Do you think that the contract is  
23 still in effect?  
24 A. I think they cancelled prior to the  
25 expiration of the contract.

[Page 74]

1 Freed  
2 I understand that I am under oath,  
3 but that's my recollection. I could be wrong.  
4 I'm looking at the contract and the  
5 date that will verify. I am here without that  
6 information. I believe that Cocksackie is one of  
7 the accounts that terminated prior.  
8 Q. How much were you in arrears to  
9 Cocksackie?  
10 A. I don't recall.  
11 Q. How many months?  
12 A. I don't recall.  
13 Q. Is it fair to say that you were in  
14 arrears?  
15 A. I believe so.  
16 Q. When --  
17 A. At the day of the termination, we  
18 would have been in arrears on some of these  
19 facilities two to three months.  
20 On some of the facilities on the day  
21 we were terminated, we were paid in full.  
22 Q. What do you mean by terminated?  
23 A. In other words, on the day that they  
24 concluded our service. We had been behind on  
25 some of the facilities two to three months on

[Page 75]

1 Freed  
2 commissions; and some of them more. Some of  
3 them four months.  
4 When we -- but we had caught up, and  
5 then we were terminated, didn't pick up the  
6 option.  
7 Q. When you say terminated, were you  
8 including the case where the contract expired  
9 and the option to renew was not used?  
10 A. Some of them occurred that way, where  
11 the option was not picked up. And some of them,  
12 they terminated or they wouldn't allow our  
13 driver's to come into the facility while our  
14 contract was in effect.  
15 MR. SUSSMAN: Can I have a minute  
16 outside?  
17 MR. SCHULZE: If it is an issue of  
18 privilege, okay. Don't speak about his  
19 testimony, though.  
20 MR. SUSSMAN: I am not going to talk  
21 to him about his testimony. There is no  
22 requirement that I talk to him about his  
23 testimony during the deposition, counsel.  
24 (Witness and counsel leave, confer  
25 and return to the deposition room.)

[Page 76]

1 Freed  
2 Q. Having conferred with your counsel,  
3 is there any testimony that you want to correct?  
4 A. I just -- I don't think there is  
5 anything specific. We have been late on  
6 commissions for the last year. That's just the  
7 way it is.  
8 The reason we were terminated, and I  
9 might have misunderstood your questions here, is  
10 that we went to the State Police because my  
11 employee was incarcerated. We were retaliated  
12 against, and that's why the contracts were  
13 cancelled.  
14 They were not cancelled because we  
15 were late on commissions, because we were always  
16 late on commissions.  
17 Q. Did your attorney tell you to say  
18 that?  
19 MR. SUSSMAN: Objection.  
20 MR. SCHULZE: It is improper for you  
21 to confer about his testimony.  
22 MR. SUSSMAN: There is no question  
23 pending. I am permitted to talk to him about  
24 his testimony and about his case.  
25 MR. SCHULZE: What you talk about

[Page 77]

[20] (Pages 74 to 77)

<p>1 Freed</p> <p>2 after the witness is sworn is no longer</p> <p>3 privileged.</p> <p>4 MR. SUSSMAN: I disagree. All</p> <p>5 communications between the client and the</p> <p>6 attorney are privileged. I disagree.</p> <p>7 Q. What do you base that statement on?</p> <p>8 A. I base the statement on the fact</p> <p>9 that, again, we have been late on commissions</p> <p>10 for the last year or better, and during that</p> <p>11 time they renewed our contract.</p> <p>12 Now we have a situation where they go</p> <p>13 in, and I think you refer to it legally as self</p> <p>14 help, and helped themselves to our money and</p> <p>15 incarcerated our employee. And within two</p> <p>16 months they pull the contract.</p> <p>17 I don't think it is a stretch to</p> <p>18 assume that it was not a question of the</p> <p>19 commission being late. I misunderstood the</p> <p>20 questions.</p> <p>21 I thought you were referring to</p> <p>22 why -- what their stance was. I knew why the</p> <p>23 contracts were cancelled.</p> <p>24 Q. Do you have anything other than the</p> <p>25 temporal proximity that you base that statement</p> <p style="text-align: right;">[Page 78]</p>	<p>1 Freed</p> <p>2 MR. SUSSMAN: Read back the</p> <p>3 testimony. Don't play that game. He just said</p> <p>4 that to you.</p> <p>5 MR. SCHULZE: I am asking him</p> <p>6 questions and not you. You cannot</p> <p>7 mischaracterize the testimony, and then ask him</p> <p>8 for the basis.</p> <p>9 He told you the basis. He told you.</p> <p>10 Q. Are you ready to answer the question?</p> <p>11 A. If my attorney says I can, sure.</p> <p>12 MR. SCHULZE: He can answer the</p> <p>13 question.</p> <p>14 MR. SUSSMAN: Do not mischaracterize</p> <p>15 the testimony in your question.</p> <p>16 Q. I am not characterizing your</p> <p>17 testimony at all.</p> <p>18 Tell me why, or what is the basis for</p> <p>19 your knowledge that you were terminated or not</p> <p>20 renewed in retaliation for your complaint.</p> <p>21 A. We have had a history of being late</p> <p>22 on commissions. For the last year or better,</p> <p>23 our commissions have been late.</p> <p>24 The letter I got from Kidder was back</p> <p>25 in November. Since then, between November and</p> <p style="text-align: right;">[Page 80]</p>
<p>1 Freed</p> <p>2 on?</p> <p>3 MR. SUSSMAN: Objection to form.</p> <p>4 THE WITNESS: I'm not sure what that</p> <p>5 means.</p> <p>6 MR. SCHULZE: You can say objection</p> <p>7 to form.</p> <p>8 A. I don't know what that means.</p> <p>9 Q. You said you knew that the contracts</p> <p>10 were not renewed in retaliation for your</p> <p>11 complaint because it happened around the same</p> <p>12 time.</p> <p>13 MR. SUSSMAN: Objection. He did not</p> <p>14 say that. You are mischaracterizing the</p> <p>15 testimony. What he said is that the reason</p> <p>16 given he was late --</p> <p>17 MR. SCHULZE: He said --</p> <p>18 MR. SUSSMAN: Excuse me. I will not</p> <p>19 let you mischaracterize or shorten his</p> <p>20 testimony. That's not going to happen.</p> <p>21 He did not say that. He said there</p> <p>22 was history of being late. And that during that</p> <p>23 history, he said, was that his contracts were</p> <p>24 extended.</p> <p>25 MR. SCHULZE: Who is testifying here?</p> <p style="text-align: right;">[Page 79]</p>	<p>1 Freed</p> <p>2 whenever this occurred at Shawangunk, they</p> <p>3 renewed contracts. They renewed in spite of</p> <p>4 that.</p> <p>5 Now we have a situation where they</p> <p>6 broke the law, and they imprisoned an employee.</p> <p>7 We took the appropriate action. We went to the</p> <p>8 State Police.</p> <p>9 And I wanted help, and no one would</p> <p>10 help me. Finally -- and basically, because I</p> <p>11 took those actions, they cancelled all our</p> <p>12 contracts specifically.</p> <p>13 We have nothing left. As a matter of</p> <p>14 fact --</p> <p>15 Q. Is your contract still in effect at</p> <p>16 Fishkill?</p> <p>17 A. Yes, it is.</p> <p>18 Q. Is your contract still in effect at</p> <p>19 Green?</p> <p>20 A. Yes, it is. That means they only</p> <p>21 cancelled eight out of ten.</p> <p>22 Q. When you say cancelled, do you mean</p> <p>23 non-renewed?</p> <p>24 A. Either that or non-renewed.</p> <p>25 Cancelled in the middle of the contract, or</p> <p style="text-align: right;">[Page 81]</p>

[21] (Pages 78 to 81)

1 Freed  
2 would not let our employees into the facility  
3 even though we had a contract.  
4 Q. You don't know why contracts were  
5 cancelled in the middle; correct?  
6 A. It is simple to figure out. I don't  
7 have that information in front of me and I don't  
8 have it memorized.  
9 Q. And you don't know how many of them?  
10 A. No, not specifically.  
11 Q. Which facilities would not let your  
12 employees in?  
13 A. Lincoln Correctional, and there were  
14 others. But Lincoln Correctional was the one  
15 that stand outs in my mind.  
16 Q. When?  
17 A. Prior to them cancelling our contract  
18 and telling us to get the machines out.  
19 Q. What date?  
20 A. I don't know offhand.  
21 Q. What month?  
22 A. I don't know. It was -- I don't  
23 recall. It was after what occurred at  
24 Shawangunk.  
25 Q. How do you know that?

[Page 82]

1 Freed  
2 A. Because I remember her referring to  
3 Shawangunk.  
4 Q. Who?  
5 A. Ms. Mason.  
6 Q. You spoke to Miss Mason?  
7 A. I tried to.  
8 Q. You said that you remembered Ms.  
9 Mason referring to it?  
10 A. Yes.  
11 Q. Who did she refer to it with?  
12 A. To me.  
13 Q. You spoke to Miss Mason?  
14 A. Yes. I spoke to Ms. Mason. I tried  
15 to. And I have an e-mail from her telling me to  
16 stop e-mailing her and stop talking to me. Get  
17 out.  
18 And I tried to talk to her.  
19 Q. Was there a contract in effect at  
20 that time?  
21 A. Yes, yes.  
22 Q. You are referring to Lincoln  
23 Correctional Facility; correct?  
24 A. I am referring to Lincoln  
25 Correctional Facility. I believe there was a

[Page 83]

1 Freed  
2 contract in effect when she refused to let my  
3 people come in and service the machines. You  
4 know -- --  
5 Q. Go ahead.  
6 A. -- having a contract in effect and  
7 not being allowed to go in and service the  
8 machines with the machines still being there, to  
9 me, that ended the contract.  
10 Q. Do you have something that you want  
11 to add?  
12 A. No, that's fine.  
13 Q. Did anyone at DOCS ever state to  
14 Rockland they were terminating or not renewing a  
15 contract because of your complaints?  
16 A. Yes.  
17 Q. Who?  
18 A. Steward at Eastern Correctional  
19 Facility.  
20 Q. Who is that?  
21 A. Her name is Marti. I don't know her  
22 last name.  
23 Q. When was this conversation?  
24 A. Just prior to their not renewing our  
25 extension.

[Page 84]

1 Freed  
2 Q. When was that?  
3 A. During the summer.  
4 Q. What month?  
5 A. I don't know. August. That's a  
6 guess.  
7 Q. Who did she speak to?  
8 A. Me.  
9 Q. Tell me everything you know about  
10 that conversation.  
11 A. She had advised me that our third  
12 year of the contract was over, and she was  
13 sending me the extension to sign, and get  
14 notarized and send back to her.  
15 I did that.  
16 Then I opened up the New York State  
17 Contract Reporter the following month and found  
18 that the facility was being advertised for bid.  
19 I called her. She said: Mike, I did  
20 everything I could. They accused me in Albany  
21 of being your relative. That's how hard I  
22 worked for you. They will not renew any of your  
23 contracts because of what is going on.  
24 She said: Do you know how much work  
25 I have to do to put out another bid? I did

[Page 85]

[22] (Pages 82 to 85)

1 Freed  
 2 everything I could, and they will not renew your  
 3 contract.  
 4 And she said our service was -- our  
 5 service has always been, to every one of these  
 6 facilities way over the top, way over what  
 7 anybody else has done for them. Way over the  
 8 top.  
 9 Q. She said because of the situation?  
 10 A. That's exactly correct.  
 11 Q. What did she mean by Albany?  
 12 A. She said specifically Albany. I  
 13 would imagine that she is talking about somebody  
 14 way over her pay grade.  
 15 Q. Do contracts need to be approved by  
 16 the state controller?  
 17 A. Yes. I believe so.  
 18 Q. Do you know whether the state  
 19 controller expressed any concern about the  
 20 contract renewal at Eastern?  
 21 A. I do not.  
 22 Q. Do you know where the state  
 23 controller is located?  
 24 A. I do not.  
 25 Q. Did Marti mention Stewart Kidder in  
 [Page 86]

1 Freed  
 2 this call?  
 3 A. She did not mention anyone by name.  
 4 Q. Did anyone ever tell you that the  
 5 contracts were not being renewed because of  
 6 instructions from Stewart Kidder?  
 7 A. No. I don't believe so.  
 8 Q. Did Rockland bounce any checks to  
 9 DOCS in 2007?  
 10 A. Yes.  
 11 Q. How many?  
 12 A. I don't know.  
 13 Q. Were there some correctional  
 14 facilities where you did not make any commission  
 15 payments at all in 2007?  
 16 A. I don't have that knowledge. I don't  
 17 know.  
 18 Q. Would you be surprised to find out  
 19 that there were?  
 20 A. Yes.  
 21 Q. Do you know what happens to the  
 22 inmates' accounts when commissions are not paid  
 23 on time?  
 24 A. No.  
 25 Q. Was Rockland ever told that Roxanne  
 [Page 87]

1 Freed  
 2 Creen had made the decision to cancel the  
 3 contract at Shawangunk?  
 4 A. No.  
 5 Q. Had Rockland ever told you that  
 6 Stewart Kidder made the decision to cancel the  
 7 contract?  
 8 A. I believe when -- I can only guess  
 9 based on the conversation I had with Marti that  
 10 when she was talking about Albany that Stewart  
 11 Kidder is the decisions maker in Albany.  
 12 Q. So you are referring to that one  
 13 reference to Albany in that conversation; is  
 14 that correct?  
 15 A. I am sorry. One more time.  
 16 Q. When you say this, you are referring  
 17 to that one reference to Albany --  
 18 A. In that specific answer to your  
 19 question, yes.  
 20 Q. Was anything else done?  
 21 A. In reference to?  
 22 Q. Did anyone ever tell you that Stewart  
 23 Kidder directed that the contract with  
 24 Shawangunk be cancelled?  
 25 A. I think Marti intimated that.  
 [Page 88]

1 Freed  
 2 Q. By her reference to Albany?  
 3 A. Yes.  
 4 Q. Anything else?  
 5 A. I can't think of anything.  
 6 Q. What did Marsha Riley do to retaliate  
 7 against Rockland?  
 8 A. After this occurred at Shawangunk,  
 9 she refused any communication with myself or our  
 10 company. She insisted that we were behind on  
 11 our commissions, that we were not behind on.  
 12 After setting up a meeting that I  
 13 asked for to discuss our situation at Lincoln,  
 14 she refused to meet with me once we arrived, and  
 15 walked out of the building and walked out.  
 16 Q. What day was that?  
 17 MR. SUSSMAN: Let him finish the  
 18 whole answer. Finish your whole answer, please.  
 19 A. I don't recall the day.  
 20 Q. Go ahead.  
 21 A. And she -- and she locked our people  
 22 out of the building.  
 23 Q. When you say she refused any  
 24 communication, what do you mean?  
 25 A. I have e-mails from Miss Riley saying  
 [Page 89]

1 Freed  
2 don't ever e-mail her again.  
3 Q. Did you e-mail her after that?  
4 A. Yes.  
5 Q. Did she respond?  
6 A. I believe again with an e-mail saying  
7 not to e-mail her again.  
8 Q. When did this start?  
9 A. After the situation at Shawangunk,  
10 but specifically I cannot recall.  
11 Q. Was Rockland barred from entering  
12 into a contract with the New York City school  
13 system?  
14 A. New York City school system? Not  
15 that I am aware of.  
16 Q. Was there a New York City agency that  
17 Rockland was barred from entering into contracts  
18 with?  
19 A. I am not aware of any stipulation  
20 that we cannot bid on any contracts for any -- I  
21 have not gotten anything to the effect in any  
22 way that we are barred from entering into  
23 contracts with anyone.  
24 MR. SUSSMAN: Can I have the question  
25 read back?

[Page 90]

1 Freed  
2 (Record read as requested.)  
3 MR. SUSSMAN: To be clear, when you  
4 say New York City agency, you are talking about  
5 a city agency and not an agency located in the  
6 city. You are talking about an agency of the  
7 City of New York?  
8 MR. SCHULZE: Yes, that's what I was  
9 talking about.  
10 Q. Are there any agencies in the City of  
11 New York that you are barred from contracting  
12 with?  
13 A. I have not received any document or  
14 written communication from anyone saying that we  
15 are barred from bidding on a contract.  
16 Q. After Rockland's contracts is expired  
17 or were terminated at the correctional  
18 facilities, were they rebid?  
19 A. Some were and some were not.  
20 Q. Do you know which were?  
21 A. Specifically I don't.  
22 Q. Did Rockland bid on any of those?  
23 A. No.  
24 Q. Why not?  
25 A. Most of them were not put out for

[Page 91]

1 Freed  
2 bid. They were just -- I don't know what  
3 happened to them.  
4 It is kind of strange. The ones that  
5 were, we did not participate in.  
6 Q. That was a corporate decision?  
7 A. No, no. Let me go back.  
8 I think there were one or two that  
9 went out for bid. The other ones were just  
10 given to another company.  
11 There was no bid. They were just  
12 given out.  
13 Q. What is the basis for that statement?  
14 A. Because I follow the Contract  
15 Reporter, and the bids going out and the  
16 contracts going out. We get a letter to come  
17 take the vending machines. And the next day  
18 there is another company putting vending  
19 machines in.  
20 I have no idea how they got the  
21 contract. Other than one or two of the smaller  
22 facilities that might have gone out for bid,  
23 seven or eight of them did not. They were just  
24 given away.  
25 Q. Did you bid on any of them?

[Page 92]

1 Freed  
2 A. As of right now, as of today, we are  
3 bidding on one because of a mandatory visit for  
4 Fishkill is today. We will be participating in  
5 that.  
6 I don't know if we are welcome to.  
7 My feeling is that we are not welcome to. I  
8 have reason to believe that we are not welcome.  
9 Q. Why?  
10 A. Because when I called the steward at  
11 that facility to ask for the bid package, which  
12 is a normal everyday telephone call, I was told  
13 that she would have to check first to see if we  
14 could be included.  
15 Q. Who was the steward?  
16 A. Suzette Petterossi.  
17 MR. SCHULZE: Let's take a short  
18 luncheon recess.  
19 (Luncheon recess taken at this time.)  
20 CONTINUED EXAMINATION  
21 BY MR. SCHULZE:  
22 Q. When were you notified that the  
23 contract at Lincoln would not be renewed? And  
24 by you, I mean Rockland.  
25 A. We participated in the bid on that,

[Page 93]

[24] (Pages 90 to 93)

1 Freed  
2 so I don't know the time, but we were involved  
3 in the rebid.  
4 Q. When was the rebid?  
5 A. I don't recall.  
6 MR. SCHULZE: Mark as Defendant  
7 Exhibit E a letter of March 27, 2007 from Marsha  
8 Riley to Michael Freed.  
9 (Exhibit D-E, Letter, 3/27/07, marked  
10 for identification.)  
11 Q. I show you what has been marked for  
12 identification as Defendant Exhibit E.  
13 Do you recognize that document?  
14 A. Yes.  
15 Q. What is it?  
16 A. It is a letter saying that they will  
17 not extend our contract.  
18 Q. What is the date of this letter?  
19 A. It is March 27, 2007.  
20 Q. Does that refresh your recollection  
21 as to when you were told that Lincoln would not  
22 be extending your contract?  
23 A. Yes, it does.  
24 Q. This was before you ever made a  
25 complaint to the State Police?

[Page 94]

1 Freed  
2 A. I am sorry?  
3 MR. SCHULZE: Read it back.  
4 (Record read as requested.)  
5 A. This letter was before the complaint  
6 to the State Police, yes.  
7 Q. And this letter notifies you that  
8 Lincoln will not be renewing your contract;  
9 correct?  
10 A. That is correct. That's what the  
11 letter does state.  
12 Can I add something?  
13 MR. SUSSMAN: No.  
14 Q. Go ahead.  
15 MR. SUSSMAN: Just answer the  
16 questions.  
17 Q. You want to add something?  
18 A. No. That's fine.  
19 Q. What would you like to add?  
20 A. That the letter is -- that the letter  
21 is incorrect.  
22 Q. In what way is the letter incorrect?  
23 A. We were current on commissions at  
24 this time. But we had some conversations with  
25 Miss Riley after this letter that we weren't

[Page 95]

1 Freed  
2 current on the commissions.  
3 However, after the situation, the  
4 conversations broke off. After the situation at  
5 Shawangunk, the conversations broke off, and  
6 Miss Riley would not look at the evidence that  
7 we had showing that we had received the  
8 commissions, but that they had been commissions.  
9 Yes. We were late on her  
10 commissions. There is no question about it,  
11 that we were late on the commissions. She is  
12 incorrect that we were that late on commissions.  
13 Basically we were in the process of  
14 explaining to her what was going on when this  
15 incident happened at Shawangunk.  
16 Thereafter, there was no more  
17 conversations.  
18 Q. At the time you received this letter,  
19 you had not yet made any complaints to the State  
20 Police or to any other government officials  
21 about the conduct of DOCS; correct?  
22 A. I'm sorry.  
23 MR. SUSSMAN: We can stipulate to  
24 that if you want. It is obvious, sequentially,  
25 it is obvious.

[Page 96]

1 Freed  
2 MR. SCHULZE: Okay. Will you  
3 stipulate that the same is true at the time that  
4 Mr. Kidder sent his letter November 2006?  
5 MR. SUSSMAN: Yes. The protected  
6 speech raised in this case is about Shawangunk.  
7 That is clear. We are not arguing about that.  
8 MR. SCHULZE: Okay. That saves some  
9 time.  
10 Q. Was Rockland ever placed on the New  
11 York City School Construction Authority  
12 disqualified list? Was Rockland ever placed on  
13 that list?  
14 A. Not that I am aware of. I have no  
15 documentation to that effect.  
16 Q. Did Rockland default on a contract  
17 with the New York City Construction Authority?  
18 A. We completed the contract, but we  
19 were behind on commissions at the conclusion of  
20 the contract.  
21 Q. Did you ever make up those  
22 commissions?  
23 A. We did not.  
24 Q. Why not?  
25 A. I just know that we didn't. I think

[Page 97]

[25] (Pages 94 to 97)

1 Freed  
2 we had experienced -- we were just -- the  
3 contract was not as profitable as we thought it  
4 would be. And we finished our contract and took  
5 our machines out.  
6 And we owed them commissions at the  
7 end of the contract and they -- if they did in  
8 fact do what you say, put us on the blacklist,  
9 then they took the appropriate action for that.  
10 They did not lock up my people.  
11 Q. Did you have anything to add?  
12 A. No.  
13 Q. As we sit here today, are you  
14 delinquent, Rockland, on contracts that have  
15 expired or that have been terminated with DOCS?  
16 A. Is Rockland Vending Corporation  
17 delinquent as of right now?  
18 Q. Yes. Rockland Vending is in Chapter  
19 11.  
20 A. Since the filing -- post-filing we  
21 are up to date. Pre-filing, yes.  
22 Q. Meaning you are stating that these  
23 debts have been extinguished in Chapter 11?  
24 A. They have been set aside by the  
25 Bankruptcy Court.

[Page 98]

1 Freed  
2 Q. We don't have to go into  
3 technicalities of language.  
4 The Bankruptcy Court has ruled that  
5 you don't owe these debts any longer?  
6 A. That is not correct. The way the  
7 Bankruptcy Court works that the debts are  
8 negotiated. And hopefully, we will -- I am not  
9 a lawyer.  
10 I think that is a tough -- for me to  
11 define what happens in bankruptcy is, you know,  
12 is something that I can't do.  
13 Q. Is the bankruptcy proceeding still  
14 continuing?  
15 A. Yes.  
16 Q. Has a plan been approved by the  
17 Court?  
18 A. Yes. I believe so. I believe we are  
19 in the process of doing that. We are in  
20 approval. We are fine, yes.  
21 MR. SUSSMAN: I don't know if he  
22 understands your question.  
23 MR. SCHULZE: I know.  
24 MR. SUSSMAN: He is asking about a  
25 specific plan that was submitted by the Trustee

[Page 99]

1 Freed  
2 or by some other responsible party.  
3 Was that, to your knowledge,  
4 submitted and approved by the court to deal with  
5 your debts --  
6 MR. SCHULZE: Let me save time.  
7 Q. For the purposes of this proceeding,  
8 I don't care what happens in the Bankruptcy  
9 Court.  
10 At the time you filed for bankruptcy,  
11 did you owe money to DOCS on the contract?  
12 A. Yes.  
13 Q. Do you know how much?  
14 A. No.  
15 Q. Do you know on which contracts?  
16 A. I assume on all of them because it is  
17 a month-to-month payment. Even if we were up to  
18 date, there is an amount of money that is owed.  
19 Q. Do the contracts with DOCS require  
20 Rockland to maintain any documents?  
21 A. To maintain any documents?  
22 Q. Yes.  
23 A. I don't know.  
24 Q. Are you -- go ahead.  
25 A. Yes. Commission statements given

[Page 100]

1 Freed  
2 monthly along with gross sales.  
3 Q. How long do you have to keep those?  
4 A. That I don't know.  
5 Q. Does Rockland have a document  
6 retention policy?  
7 A. No, not specifically.  
8 Q. Do you have a general one?  
9 A. No.  
10 Q. That is a lawyer's trick. Every time  
11 you say not specifically, you will get that  
12 question.  
13 A. Okay.  
14 Q. Do you keep a file of correspondence  
15 with DOCS?  
16 A. No.  
17 Q. Does anybody at Rockland keep such a  
18 file?  
19 A. No, no.  
20 Q. Do you keep e-mails between Rockland  
21 and DOCS?  
22 A. Some of them that I think are  
23 relevant, but not as a rule. If he needs  
24 follow-up, I will move it over.  
25 Q. Since you instituted this lawsuit,

[Page 101]

[26] (Pages 98 to 101)

1 Freed  
2 have you changed your policies in that regard?  
3 A. No.  
4 Q. Have you instructed your employees  
5 not to discard documents during the pendency of  
6 this lawsuit?  
7 A. No. My employees don't really have  
8 documents, I wouldn't think. They are route  
9 drivers.  
10 Q. Do you have any documents relating to  
11 the complaint to the State Police?  
12 A. I don't know. I don't know if there  
13 was a police file that was given to us.  
14 Q. Do you have any document relating to  
15 a complaint to the Attorney General's Office?  
16 A. No.  
17 Q. Do you have any documents regarding  
18 any other complaints you made to state officials  
19 about the events at Shawangunk?  
20 A. No.  
21 Q. Have you ever spoken to George  
22 Glassanos?  
23 A. Who is that?  
24 MR. SUSSMAN: He was the lawyer  
25 mentioned earlier.

[Page 102]

1 Freed  
2 A. I am sorry. The lawyer who advised  
3 them.  
4 Q. I am not going to represent that.  
5 A. No, never spoke to him.  
6 Q. What are your wife's duties at  
7 Rockland?  
8 A. Office Manager and Vice President.  
9 Q. Would she often be the one to contact  
10 the facilities directly?  
11 A. That would be both of us. We share  
12 that responsibility.  
13 Q. Anyone else who would do that as a  
14 regular part of their duties?  
15 A. On the DOCS facilities?  
16 Q. Yes.  
17 A. There is one more person who is an  
18 operations manager. And he would be the one  
19 when he was with us that would have the  
20 conversation.  
21 Q. What was his name?  
22 A. His name was Mike Shay.  
23 Q. When Gallagher went to Shawangunk on  
24 May 9, was there anyone else with him in the  
25 truck?

[Page 103]

1 Freed  
2 A. I don't believe so.  
3 Q. Was there anyone else from Rockland  
4 at the facility on that date?  
5 A. Not that I know of, no. I don't  
6 believe so.  
7 The only other one would have been a  
8 service tech who would have been in there  
9 repairing a machine. And to the best of my  
10 knowledge, there was no one else there.  
11 Q. Did other drivers service Shawangunk,  
12 or was Gallagher the only one?  
13 A. We would have -- during the term of  
14 the contract, there would have been other  
15 drivers as drivers do change routes or leave the  
16 company and come onto the company.  
17 Q. In 2007, would Gallagher have been  
18 the only driver who went to Shawangunk?  
19 A. I believe there was another driver  
20 who left the company and then Gallagher took  
21 that route. Whether it was in 2007 or earlier,  
22 I am not sure.  
23 Q. At any given time there would be one  
24 driver assigned to that facility; is that  
25 correct?

[Page 104]

1 Freed  
2 A. Yes. Can I confer with my attorney  
3 for a moment?  
4 Q. On an issue of privilege?  
5 A. Yes.  
6 Q. On an issue of privilege, yes.  
7 (Witness and counsel leave, confer  
8 and return to the deposition room at this time.)  
9 Q. Is what you are writing anything to  
10 do with this case?  
11 MR. SUSSMAN: Don't write anything  
12 down right now about anything.  
13 Q. Does that have anything to do with  
14 this case?  
15 MR. SUSSMAN: So that you are clear,  
16 Mr. Freed, and you didn't ask this directly, is  
17 not sure the date on this letter, Defendant  
18 Exhibit E is the date close to when he received  
19 the document. You didn't really ask him when he  
20 received it.  
21 The date is on the document and it  
22 speaks for itself. I told him to go back to his  
23 documents and he can check the date. And if  
24 there is some discrepancy, obviously, we will  
25 let you know that there is an inconsistent date

[Page 105]

[27] (Pages 102 to 105)

<p>1 Freed</p> <p>2 with respect to the document.</p> <p>3 It does not comport with his memory</p> <p>4 as to the events and the sequence of the events.</p> <p>5 Q. What is your memory of the date?</p> <p>6 A. It doesn't meet the sequence that I</p> <p>7 recall.</p> <p>8 Q. What is the sequence you recall?</p> <p>9 A. I would rather check it before I say</p> <p>10 that.</p> <p>11 Q. You just said that this doesn't meet</p> <p>12 the sequence you recall.</p> <p>13 MR. SUSSMAN: I said it.</p> <p>14 Q. So it does meet your sequence?</p> <p>15 A. No, it does not.</p> <p>16 Q. What is your sequence that you can</p> <p>17 recall?</p> <p>18 A. My recollection is that this letter</p> <p>19 was much closer or within the time period of the</p> <p>20 situation at Shawangunk.</p> <p>21 Q. What do you mean by much closer?</p> <p>22 A. I would rather research it. I don't</p> <p>23 have -- you my recollection is inconsistent with</p> <p>24 the date on this letter. So I would like to go</p> <p>25 back and make sure that the date on letter is</p> <p style="text-align: right;">[Page 106]</p>	<p>1 Freed</p> <p>2 the entire calendar for 2006 and 2007 at least.</p> <p>3 You can redact things like personal names and</p> <p>4 birthdays if you prefer.</p> <p>5 MR. SUSSMAN: Let me take a look at</p> <p>6 it.</p> <p>7 (REQUEST)</p> <p>8 Q. Anything else?</p> <p>9 A. That's it. I am going to respond to</p> <p>10 that. You just said anything else.</p> <p>11 Miss Riley specifically said to me</p> <p>12 during this situation: We know what happened at</p> <p>13 Shawangunk, quote, unquote. We know what</p> <p>14 happened at Shawangunk. Those were her words.</p> <p>15 I don't know how she could tell me</p> <p>16 that if this letter arrived on March 27. I</p> <p>17 remember that.</p> <p>18 Q. You are talking about an oral</p> <p>19 communication?</p> <p>20 A. That is correct. She said that.</p> <p>21 Q. Did you receive this letter before or</p> <p>22 after this communication?</p> <p>23 A. How could I have received the letter?</p> <p>24 We would have been out of there -- no, I</p> <p>25 received -- no. I remember that conversation</p> <p style="text-align: right;">[Page 108]</p>
<p>1 Freed</p> <p>2 correct.</p> <p>3 Q. What are you going to do in order to</p> <p>4 research it?</p> <p>5 A. I am going to try to find notes that</p> <p>6 I have in my calendar based on when I received</p> <p>7 it, or try to go back and see if we have a copy</p> <p>8 of the letter.</p> <p>9 Q. Do you have a calendar covering the</p> <p>10 days at issue?</p> <p>11 A. I have an accountant's book, yes.</p> <p>12 Q. You would make entries when you would</p> <p>13 receive letters such as this?</p> <p>14 A. If I received a letter and I was</p> <p>15 going to respond to it, I would have Miss</p> <p>16 Mason's name and telephone number where I would</p> <p>17 call her back.</p> <p>18 MR. SCHULZE: Do you have any</p> <p>19 objection in providing that?</p> <p>20 MR. SUSSMAN: No. There may be</p> <p>21 irrelevant personal parts. I have not seen the</p> <p>22 book.</p> <p>23 Let me review it, and if the pages</p> <p>24 are relevant, I will certainly share it.</p> <p>25 MR. SCHULZE: I would like to have</p> <p style="text-align: right;">[Page 107]</p>	<p>1 Freed</p> <p>2 and it was after Shawangunk. Because she said</p> <p>3 we know what happened at Shawangunk, quote,</p> <p>4 unquote.</p> <p>5 This letter is inconsistent unless --</p> <p>6 MR. SCHULZE: Mark as Defendant</p> <p>7 Exhibit F a one-page letter dated May 4th, 2007</p> <p>8 from Marsha Riley to Michael Freed.</p> <p>9 (Exhibit D-F, Letter, 5/4/07, marked</p> <p>10 for identification.)</p> <p>11 Q. I hand you what has been marked for</p> <p>12 identification as Defendant Exhibit F.</p> <p>13 Do you recognize this letter?</p> <p>14 A. I don't know that I received this</p> <p>15 letter. I don't recall receiving this letter.</p> <p>16 Q. Is it your testimony that you did</p> <p>17 not?</p> <p>18 A. No. My testimony is that I don't</p> <p>19 recall it.</p> <p>20 Q. Who would know whether Rockland</p> <p>21 received that letter?</p> <p>22 A. It was addressed to me, so it would</p> <p>23 have gotten to me. But I don't recognize it.</p> <p>24 Q. You don't recall being notified on or</p> <p>25 about May 4th that your contract with Lincoln</p> <p style="text-align: right;">[Page 109]</p>

[28] (Pages 106 to 109)

1 Freed  
2 had been terminated?  
3 A. I don't recall this specific letter.  
4 I don't recall something like this where there  
5 is a definition of termination. I just don't  
6 remember it.  
7 Q. If you had received this letter, what  
8 would you have done with it?  
9 A. If I had received this letter and  
10 read it, it probably would have gone into a file  
11 for Lincoln Correctional.  
12 Q. Do you still have that file?  
13 A. I still have the file, yes.  
14 Q. If you went to that file, would you  
15 be able to determine whether this letter had  
16 been received?  
17 A. I am hoping I can.  
18 Q. I will ask you to do that, and to  
19 give me a copy of the file.  
20 (REQUEST)  
21 MR. SUSSMAN: To the extent that  
22 counsel has requests, please follow up in  
23 writing with all of the requests so that we can  
24 respond because I don't know when we will  
25 receive the transcript.

[Page 110]

1 Freed  
2 Please send whatever you want on a  
3 list, and we will get the materials together. I  
4 know you have a request for a calendar at this  
5 point and a request for the Lincoln file.  
6 I don't know if there are any other  
7 documents that you asked for today.  
8 MR. SCHULZE: What I am doing here is  
9 not making a document request that goes beyond  
10 the 30(b)(6) deposition relating to -- I just  
11 wanted you to understand that.  
12 Q. Since you don't recall Defendant  
13 Exhibit F, you can put it aside. I will not ask  
14 you any further questions about it right now.  
15 Are you on any medication today?  
16 A. Yes.  
17 Q. What are you taking?  
18 A. Lipitor.  
19 Q. Does that affect your cognitive  
20 ability in any way?  
21 A. I don't think so. It affects my  
22 cholesterol.  
23 Q. That's a good thing?  
24 A. Yes, exactly.  
25 Q. Have you ever been convicted of a

[Page 111]

1 Freed  
2 crime?  
3 A. Never.  
4 Q. Is this the first time that Rockland  
5 has been in bankruptcy?  
6 A. Yes.  
7 Q. Do you currently expect to resume  
8 operations?  
9 A. Yes. We never stopped.  
10 Q. But you expect to emerge from  
11 bankruptcy?  
12 A. Yes.  
13 Q. Do you plan to bid on any DOCS  
14 Correctional Facility contracts other than  
15 Fishkill?  
16 A. In the immediate future, no,  
17 hopefully not.  
18 Q. Why not?  
19 A. Tremendously bad experience.  
20 Q. Could you --  
21 A. Tremendous drain on us financially.  
22 Q. Were these losing contracts?  
23 A. They wouldn't be, except for the  
24 problems we experienced while we were there.  
25 But they were.

[Page 112]

1 Freed  
2 Q. Did you speak to anybody at Rockland  
3 in preparation for this deposition?  
4 A. No.  
5 Q. Have you spoken --  
6 A. My wife.  
7 Q. What did you say to your wife?  
8 A. I am going to have a tough day today.  
9 Q. Anything else?  
10 A. No. That's it.  
11 Q. You did not go over the events?  
12 A. No. Didn't have to.  
13 Q. I think I might be done. Give me  
14 about three minutes to figure that out.  
15 MR. SUSSMAN: I have some questions.  
16 MR. SCHULZE: You don't want to  
17 proceed?  
18 MR. SUSSMAN: I can wait or go ahead.  
19 MR. SCHULZE: Go ahead.  
20 EXAMINATION BY  
21 MR. SUSSMAN:  
22 Q. I show you what has been marked for  
23 identification as Defendant Exhibit F. It has  
24 Paragraph A entitled "Terminations."  
25 Read that to yourself, please.

[Page 113]

[29] (Pages 110 to 113)

1 Freed  
2 A. Sure.  
3 Q. To your knowledge, was that provision  
4 common to all of the contracts with the  
5 correctional facilities?  
6 A. All of the facilities?  
7 Q. Yes.  
8 A. I think it is a standard contract  
9 language.  
10 Q. Before the incident involving Mr.  
11 Gallagher, did you receive a letter like  
12 Defendant Exhibit F from Shawangunk?  
13 A. No, not to my knowledge.  
14 Q. You started telling counsel about  
15 some occasion when you were going to meet with  
16 Miss Riley.  
17 Do you recall that?  
18 A. Very, very well.  
19 Q. Where was the meeting to be held?  
20 A. At Lincoln Correctional.  
21 Q. Where is Lincoln Correctional?  
22 A. In the 120s. It faces Central Park  
23 North in Manhattan.  
24 Q. Did you go there for the meeting?  
25 A. Yes.

[Page 114]

1 Freed  
2 Q. Were you with anyone else from your  
3 company?  
4 A. Yes.  
5 Q. Who?  
6 A. A representative.  
7 Q. Did you have a meeting?  
8 A. We had a meeting scheduled.  
9 Q. Did you have a meeting, was the  
10 question.  
11 A. Very short-lived.  
12 Q. How long did it last?  
13 A. A minute and a half, two minutes.  
14 Q. Where was the meeting as it was  
15 conducted -- it -- as it was conducted, where  
16 was it conducted?  
17 A. In Miss Riley's office.  
18 Q. Did you enter her office for the  
19 meeting?  
20 A. Yes.  
21 Q. What transpired at the meeting?  
22 A. Ms. Riley says she didn't have time  
23 for it. She didn't have time for it. And with  
24 that, she got up and left.  
25 Q. Did anyone else continue the meeting

[Page 115]

1 Freed  
2 at Lincoln?  
3 A. No.  
4 Q. What month was that?  
5 A. I don't recall.  
6 Q. When was it in relation to the  
7 Shawangunk incident?  
8 A. I believe it was after.  
9 Q. What was the purpose of the meeting,  
10 your understanding?  
11 A. The commissions that were paid and  
12 the checks that were cancelled that is referred  
13 to in the letters.  
14 We had cancelled checks on  
15 commissions that she was still cancelling our  
16 contract on.  
17 Q. Who set this meeting up?  
18 A. Mr. Ed Jones, who is Miss Riley's  
19 assistant.  
20 Q. Was he at the meeting?  
21 A. No.  
22 Q. Do you --  
23 A. I did call on the morning of the  
24 meeting to confirm the meeting. We drove  
25 down --

[Page 116]

1 Freed  
2 Q. Who did you call?  
3 A. I called and spoke to Ms. Riley.  
4 Q. What did she say?  
5 A. Come on down. I am waiting for you.  
6 We parked over on Second Avenue and  
7 took a cab over. It was expensive.  
8 We waited about a half hour for her  
9 to meet with us. We went into her office, and  
10 she said that she spends enough time all week  
11 long and will not spend any more time.  
12 She took her pocketbook and left.  
13 Q. What day of the week was the meeting?  
14 A. Friday, at ten o'clock in the  
15 morning.  
16 Q. What time were you prepared to meet?  
17 A. It was a 9:00, 9:30 meeting.  
18 Q. Counsel asked you some questions  
19 about the contact that you had with Mr. Kidder.  
20 Let me go back to the exhibits which  
21 were previously marked for identification here  
22 today.  
23 And there were two of them, one dated  
24 November 9, 2006, which is Defendant Exhibit C.  
25 MR. SCHULZE: You should refer him to

[Page 117]

[30] (Pages 114 to 117)

1 Freed  
2 the exhibit copy.  
3 Q. Exhibit C?  
4 A. Yes.  
5 Q. And you responded Exhibit D?  
6 A. I'm sorry?  
7 Q. You responded Exhibit D?  
8 A. Yes.  
9 Q. After you responded in D, did your  
10 company make timely commission payments to all  
11 of the facilities or not?  
12 A. No. We did not.  
13 Q. Did you receive -- Mr. Kidder's  
14 letter says in the last sentence in the second  
15 paragraph, "All future checks must be paid on  
16 time."  
17 Do you see that?  
18 A. Yes.  
19 Q. You are telling us that you did not  
20 comply with that?  
21 A. No. We did not.  
22 Q. What contact after November 9, 2006,  
23 and before you called Mr. Kidder in or around  
24 May 9 or 10 did you have with Mr. Kidder?  
25 A. I don't believe I spoke to Mr. Kidder  
[Page 118]

1 Freed  
2 again.  
3 Q. Did you receive any additional  
4 letters from Mr. Kidder?  
5 A. No. I did not.  
6 Q. In Exhibit E, you will notice and  
7 read the first paragraph to yourself, please, in  
8 Exhibit E.  
9 A. Okay.  
10 Q. The third sentence says, "I have  
11 spoken with you concerning this matter with  
12 respect to failure to pay timely commissions on  
13 March 13, 2007. When I responded to the letter  
14 received from Mr. Kidder, Director of Support  
15 Operations regarding vending machines."  
16 Do you have any idea what that is in  
17 reference to?  
18 A. No, I don't.  
19 Q. This letter dated March 27, 2007 also  
20 says in the same paragraph, "At the present time  
21 your corporation is behind four months," which  
22 is underscored in bold.  
23 Do you see that?  
24 A. Yes.  
25 Q. Had you received any letter from Miss  
[Page 119]

1 Freed  
2 Riley between November 23 and March 27, to your  
3 knowledge?  
4 A. I don't recall.  
5 Q. Do you recall getting it?  
6 A. I don't recall getting a letter.  
7 MR. SCHULZE: Objection.  
8 Q. You gave testimony here today about  
9 another individual you identified only by the  
10 first name of Marti.  
11 Do you recall that?  
12 A. Yes.  
13 Q. At what facility did she have  
14 responsibility for as a steward?  
15 A. Eastern Correctional as a steward.  
16 But her contract was for both Eastern and  
17 Ulster.  
18 Q. When you say her contract, the  
19 vending contract she administered was for  
20 Eastern and Ulster?  
21 A. Yes, for both.  
22 Q. At the time, and if you know the  
23 answer to the question, that you were having  
24 conversations you earlier related with Marti  
25 regarding the renewal and her reference to  
[Page 120]

1 Freed  
2 getting the renewal.  
3 And do you recall all of that  
4 testimony?  
5 A. Yes.  
6 Q. Do you know whether your company was  
7 current or behind at Eastern and Ulster?  
8 A. I believe we were behind.  
9 Q. One other inquiry I want to make  
10 because it was not clear to me on the record.  
11 Counsel asked you some questions  
12 about what happened, and if you rebid or tried  
13 to bid again on the facilities where you had  
14 been and then were no longer.  
15 You said that for larger facility,  
16 seven or eight of them, that one got the bid.  
17 MR. SCHULZE: Objection.  
18 Q. What company are we speaking about?  
19 A. Ellenville Vending, I believe.  
20 Ellenville Vending.  
21 Q. What is the process by which the  
22 Department of Corrections traditionally notifies  
23 the vending community that there is a contract  
24 for bid?  
25 A. It advertises in the New York State  
[Page 121]

[31] (Pages 118 to 121)

1 Freed  
2 Contract Reporter.  
3 Q. How frequently does that come out?  
4 A. Every Monday.  
5 Q. Do you check that routinely?  
6 A. Yes.  
7 Q. Do you have any personal knowledge  
8 from conversations with anyone about how  
9 Ellenville came to these various facilities  
10 after your departure?  
11 MR. SCHULZE: Objection.  
12 A. They just handed it to them.  
13 Q. Who just handed it to them?  
14 MR. SCHULZE: Objection.  
15 A. The Department of Corrections.  
16 Q. How do you know that?  
17 MR. SCHULZE: Objection?  
18 A. It did not go for bid. It was not  
19 bid. And the bid at Corrections is based on the  
20 lowest pricing gets the bid.  
21 When we left Eastern and Ulster, we  
22 could not get a price increase, which was the  
23 reason for the financial problems.  
24 And we were charging about 1.75 or  
25 1.80 for a sandwich. And Ellenville came in  
[Page 122]

1 Freed  
2 charging 1.40 or 1.50 for a sandwich because  
3 when we -- people went in to get the vending  
4 machines, the machines were already set up, and  
5 the corrections officers were having a tantrum  
6 over it.  
7 That's the same situation at Eastern,  
8 Ulster, Shawangunk.  
9 Q. Okay. Did you have any advance  
10 notice from Miss Creen of any plan to take the  
11 money directly from your machine and keep those  
12 monies?  
13 A. Absolutely not.  
14 Q. Had that ever happened before, to  
15 your knowledge?  
16 A. Never.  
17 MR. SUSSMAN: Thank you very much.  
18 EXAMINATION BY  
19 MR. SCHULZE:  
20 Q. Regarding that meeting at Lincoln  
21 that you just testified about, is it fair to say  
22 that you don't recall the date?  
23 A. I can get that information very  
24 easily.  
25 Q. Where is that information?  
[Page 123]

1 Freed  
2 A. In my calendar.  
3 MR. SCHULZE: I will send you a  
4 letter about that.  
5 MR. SUSSMAN: No problem.  
6 A. You probably won't understand the  
7 chicken scratch, to let you know.  
8 Q. If we can't understand what is in  
9 there, we may have to ask you some more  
10 questions.  
11 A. I will be happy to. There is nothing  
12 in there that I won't answer.  
13 MR. SCHULZE: I have nothing further.  
14 MR. SUSSMAN: Thank you.  
15 MR. SCHULZE: Thank you.  
16 (Time noted 1:35 p.m.)  
17  
18  
19  
20  
21  
22  
23  
24  
25  
[Page 124]

1 J U R A T  
2  
3 I, MICHAEL FREED, have read the  
4 foregoing record of my testimony taken at the time  
5 and place noted in the heading hereof, and I do  
6 hereby acknowledge it to be a true and correct  
7 transcript of same.  
8  
9  
10  
11  
12 MICHAEL FREED  
13  
14  
15  
16  
17 Sworn and subscribed before me  
18 on the \_\_\_\_ day of \_\_\_\_, 2007  
19  
20  
21  
22  
23  
24  
25  
Notary Public  
[Page 125]

[32] (Pages 122 to 125)

1 CERTIFICATION

2  
3 I, MICHAEL CATANIA, a Notary Public of the  
4 State of New York do hereby certify that the  
5 foregoing witness, MICHAEL FREED, was duly sworn  
6 on the date indicated; and that the foregoing is a  
7 true and accurate transcription of my stenographic  
8 notes.

9 I further certify that I am not employed  
10 by nor related to any party to this action.

11  
12  
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15  
16  
17  
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24  
25  
MICHAEL CATANIA

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